

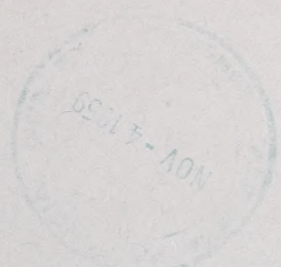
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Report of the Inquiry Into Certain Mat-
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THE CITY OF CALGARY

IN THE MATTER OF The City Act, being
Chapter 42 of the Revised Statutes of
Alberta, 1955; and

IN THE MATTER OF an Inquiry into certain
matters connected with the good govern-
ment of the City of Calgary, under
Section 728 of the said Act.

R E P O R T

of

HIS HONOUR JUDGE L. SHERMAN TURCOTTE

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IN THE MATTER OF an Inquiry into certain
matters connected with the good govern-
ment of the City of Calgary, under
Section 728 of the said Act.

R E P O R T

of

HIS HONOUR JUDGE L. SHERMAN TURCOTTE

COUNSEL:

W. A. McGillivray, Esq., Q.C.,	for The City of Calgary.
S. J. Helman, Esq., Q.C.,	
- and -	
R. R. Neve, Esq.,	for Mayor D. H. Mackay.
R. A. MacKimmie, Esq., Q.C.,	
- and -	for the Burns, Dutton
P. M. Mahoney, Esq.,	and Jennings interests.
J.V.H. Milvain, Esq., Q.C.,	for Warner Holdings, Ltd.
J. R. McColough, Esq.,	for E.V.Keith Enterprises.
C. M. Leitch, Esq.,	for Assiniboia
	Construction Co. Ltd.

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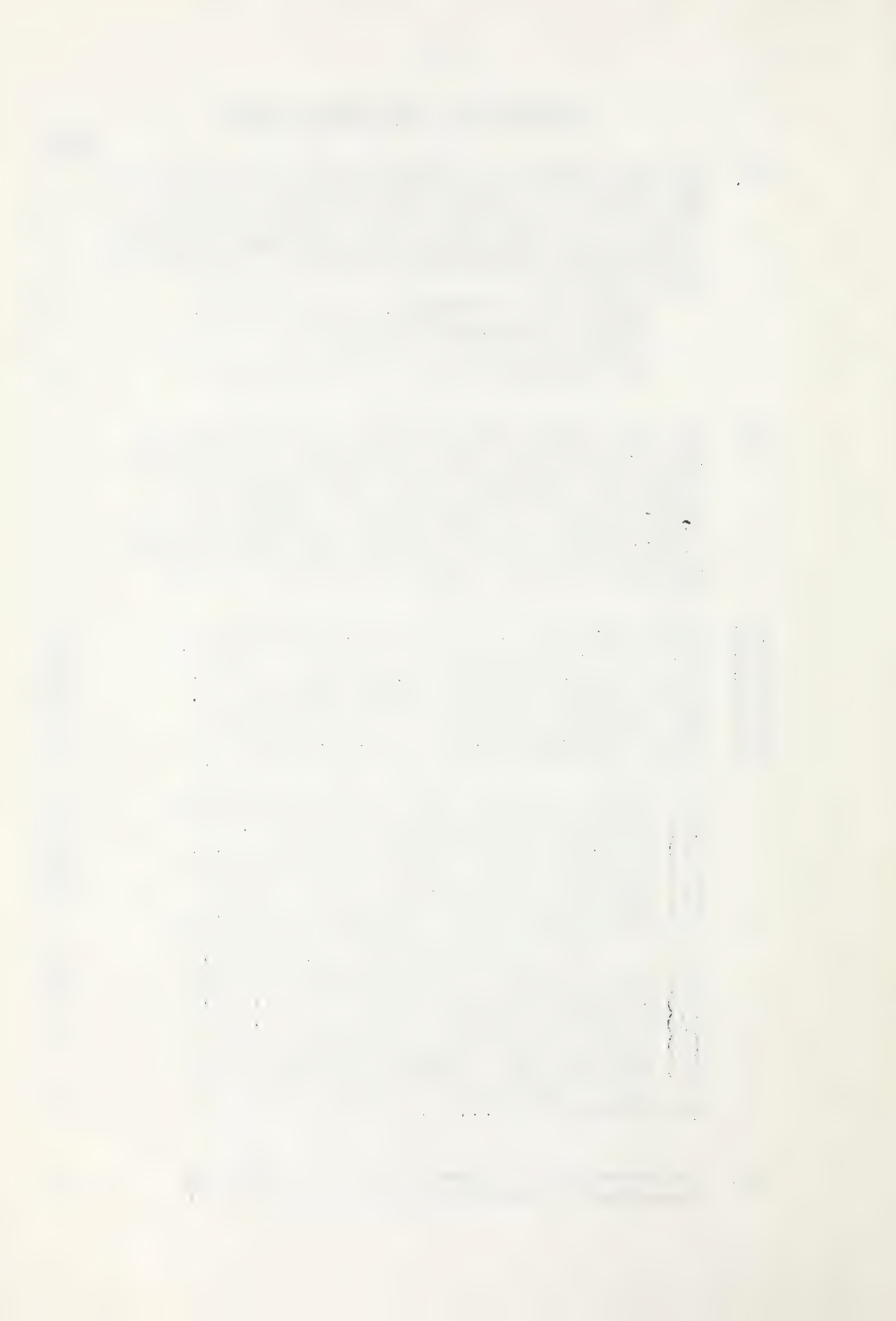
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Order of the Attorney General,
8th October, 1958.

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ORDER OF THE ATTORNEY GENERAL
8th October, 1958.

IN THE MATTER OF The City Act, being Chapter 42
of the Revised Statutes of Alberta, 1955; and

IN THE MATTER OF an Inquiry into all matters
connected with the good government of the City
of Calgary, under section 728 of the said Act.

WHEREAS section 728 of The City Act, being chapter
42 of the Revised Statutes of Alberta, 1955, provides as
follows:

"728 (1) If the council passes a resolution

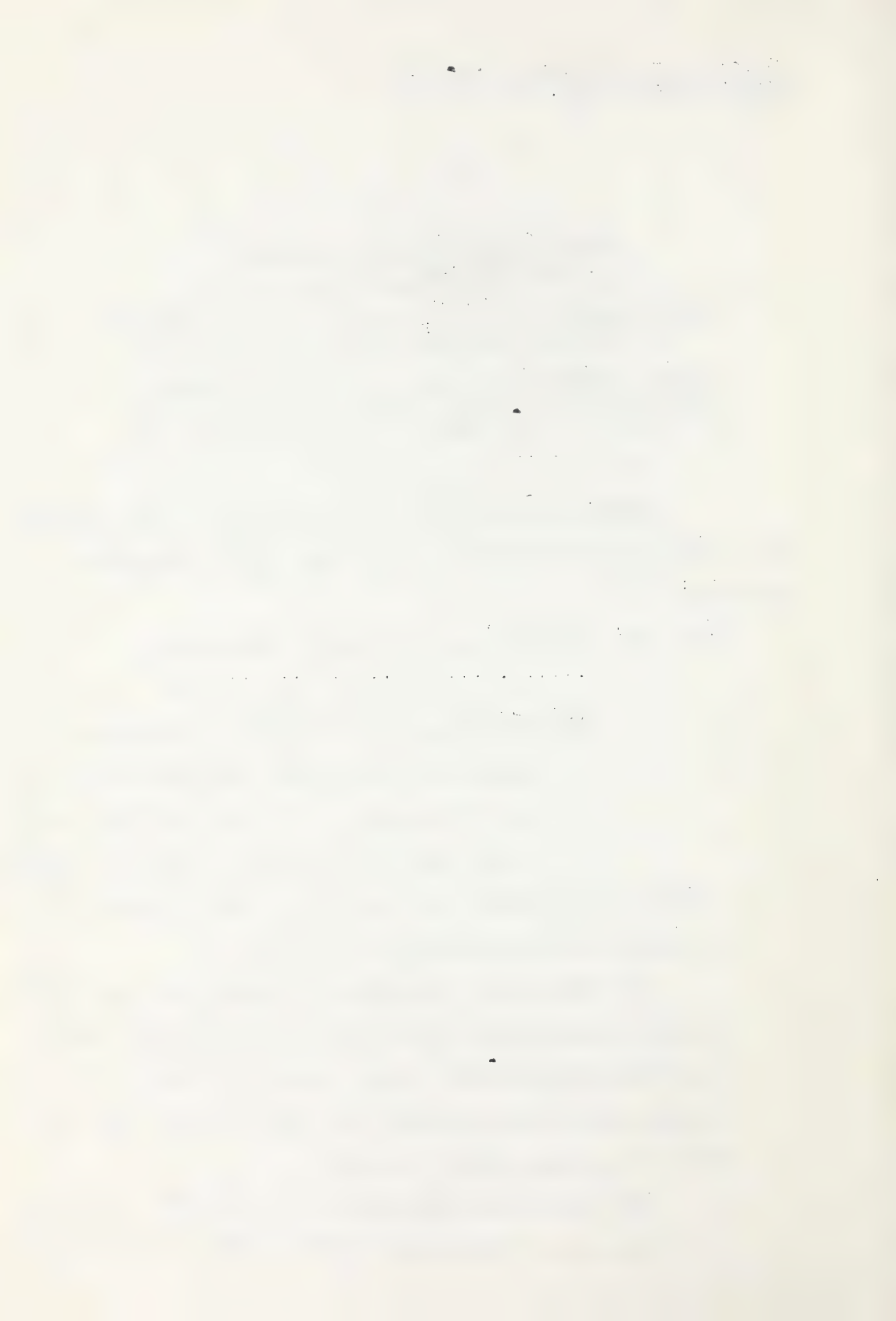
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(b) requesting that inquiry be made into or
concerning any matter connected with the
good government of the city or the conduct
of any part of the public business thereof,

the Attorney General may appoint a judge or some other
suitable person to make the inquiry.

(2) The person so appointed shall, with all con-
venient promptitude, enter upon the inquiry and upon
the conclusion thereof, shall report to the Attorney
General and to the council the result of the inquiry
and the evidence taken thereon.

(3) The person appointed has, for the purpose of
the inquiry, all the powers that may be conferred upon



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commissioners under The Public Inquiries Act.

(4) Such person is entitled to receive and shall be paid such fees as may be fixed by the council.

(5) The council may engage and pay counsel to represent the city and may pay all proper witness fees to persons summoned to give evidence at the instance of the city.

(6) Any person charged with malfeasance, breach of trust or other misconduct, or whose conduct is called in question, may be represented by counsel.";

- and

WHEREAS at a regular meeting of the Council of the City of Calgary held on the 29th day of September, A.D. 1958, the following resolution was passed:

"That this Council request of the Attorney-General that inquiry be made pursuant to section 728 of The City Act into all matters connected with the good government of the City and the conduct of the public business thereof, and that a resume of evidence presented to Council be included therewith."

NOW THEREFORE I, Ernest Manning, Attorney General of the Province of Alberta, pursuant to the said section 728 of the said Act do hereby appoint LOUIS SHERMAN TURCOTTE, a Judge of the District Court of the District of Southern Alberta, to make an inquiry into or concerning any or all

Order of the Attorney General,
8th October, 1958.
Order of the Attorney General,
14th November, 1958.

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matters connected with the good government of the City of
Calgary and the conduct of any part of the public business
thereof, and on the conclusion thereof to report to the
Attorney General and the Council of the City of Calgary the
result of the inquiry and the evidence taken thereon.

DATED at the City of Edmonton, in the Province of
Alberta, this 8th day of October, A.D. 1958.

"ERNEST MANNING"

ATTORNEY GENERAL OF THE
PROVINCE OF ALBERTA.

: : : : : : : : : :

ORDER OF THE ATTORNEY GENERAL
14th November, 1958.

IN THE MATTER OF The City Act, being Chapter 42
of the Revised Statutes of Alberta, 1955; and

IN THE MATTER OF an Inquiry into all matters
connected with the good government of the City
of Calgary, under section 728 of the said Act.

WHEREAS section 728 of The City Act, being chapter
42 of the Revised Statutes of Alberta, 1955, provides as
follows:

"728 (1) If the council passes a resolution

.....

(b) requesting that inquiry be made into or
concerning any matter connected with the

Order of the Attorney General,
14th November, 1958.

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good government of the city or the conduct of any part of the public business thereof, the Attorney General may appoint a judge or some other suitable person to make the inquiry.

(2) The person so appointed shall, with all convenient promptitude, enter upon the inquiry and upon the conclusion thereof, shall report to the Attorney General and to the Council the result of the inquiry and the evidence taken thereon.

(3) The person appointed has, for the purpose of the inquiry, all the powers that may be conferred upon commissioners under The Public Inquiries Act.

(4) Such person is entitled to receive and shall be paid such fees as may be fixed by the council.

(5) The council may engage and pay counsel to represent the city and may pay all proper witness fees to persons summoned to give evidence at the instance of the city.

(6) Any person charged with malfeasance, breach of trust or other misconduct, or whose conduct is called in question, may be represented by counsel.";

- and

WHEREAS at a regular meeting of the Council of the City of Calgary held on the 29th day of September, A.D. 1958, a Resolution was passed requesting the Attorney

Order of the Attorney General,
14th November, 1958.

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General that pursuant to the said section an enquiry be made into all matters connected with the good government of the city and the conduct of the public business thereof;

- and

WHEREAS on the 8th day of October, A.D. 1958 an order was made appointing Louis Sherman Turcotte, a Judge of the District Court of the District of Southern Alberta, to make the inquiry on the terms of reference requested by the said resolution;

- and

WHEREAS it appears that the said terms of reference are too broad in scope in that they fail to indicate what particular matters and what part of the public business are to form the subject matter of the inquiry;

- and

WHEREAS at a regular meeting of the Council of the City of Calgary held on the 10th day of November, A.D. 1958, a Resolution was passed in substitution for the Resolution dated the 29th of September and reading as follows:

" RESOLVED that the Attorney General be requested that inquiry be made into or concerning the following matters connected with the good Government of the City of Calgary or the conduct of any part of the public business of the City of Calgary,

Order of the Attorney General,
14th November, 1958.

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That is to say:

The determination of whether any present or former member of the Council, any present or former Commissioner or other official, or any present or former employee or agent of the City has derived any improper advantage directly or indirectly through his position with the City and whether any person having or having had dealings with the City by way of contract or otherwise has derived any improper advantage through the position with the City of any present or former member of the Council, present or former Commissioner or other official, or any present or former employee or agent of the City.";

NOW THEREFORE I, Ernest Manning, Attorney General of the Province of Alberta, pursuant to the said section 728 of The City Act do hereby revoke in its entirety the said order dated the 8th day of October, A.D. 1958, and do hereby appoint Louis Sherman Turcotte, a Judge of the District Court of the District of Southern Alberta, to make an inquiry into any or all matters connected with the government of the City of Calgary or the conduct of any part of the public business thereof to determine whether any present or former member of the Council, any present or former Commissioner or other official, or any present or former employee or agent of the City has derived any improper advantage directly or indirectly through his position with the City and whether

Order of the Attorney General,
14th November, 1958.

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any person having or having had dealings with the City by way of contract or otherwise has derived any improper advantage through the position with the City of any present or former member of the Council, present or former Commissioner or other official, or any present or former employee or agent of the City, and on the conclusion of the inquiry, to report to the Attorney General and to the Council of the City of Calgary, the result of the inquiry and the evidence taken thereon.

DATED at the City of Edmonton, in the Province of Alberta, this 14th day of November, A.D. 1958.

(Sgd.) ERNEST MANNING
Attorney General of the
Province of Alberta.

(SEAL)

Opening Remarks by Commissioner.

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TO: The Honourable Ernest Manning,
Premier and Attorney General
for the Province of Alberta,

- and -

TO: The City Council of the City of Calgary.

In accordance with the provisions of Section 728 of The City Act, I submit my report of the Inquiry held as a result of the Order of The Attorney General dated the 14th day of November, 1958. This Order superseded a previous order dated the 8th day of October, 1958.

I was directed,

"to make an inquiry into any or all matters connected with the government of the City of Calgary or the conduct of any part of the public business thereof to determine whether any present or former member of the Council, any present or former Commissioner or other official or any present or former employee or agent of the city has derived any improper advantage directly or indirectly through his position with the City and whether any person having or having had dealings with the City by way of contract or otherwise has derived any improper advantage through the position with the City of any present or former member of the Council, present or former Commissioner or other official, or any present or former employee or agent of the City".

NOTES

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

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Opening Remarks by Commissioner.

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Mr. W. A. McGillivray, Q.C., was appointed by City Council to act as counsel for the City Council.

I met with Mr. McGillivray on November 6th, 1958 and on December 10th, 1958 at which times we discussed the method of procedure to be followed in the conduct of the inquiry.

I was advised that Mr. S. H. Helman, Q.C., had been retained by His Worship Mayor Mackay to act on his behalf. Mr. McGillivray and I met with Mr. Helman on December 10th, 1958. We informed Mr. Helman of the procedure to be followed and assured him that he would be kept fully informed at all times of any matters to come before the Inquiry in which his client would be interested. This undertaking was carried out by Mr. McGillivray.

The Inquiry opened at the Court House, Calgary, at 9.30 a.m., December 16th, 1958.

Preliminary Objection by Mr. S. J. Helman, Q.C.,
on behalf of Mayor D. H. Mackay.

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PRELIMINARY OBJECTION BY MR. S. J. HELMAN, Q.C.,
ON BEHALF OF MAYOR D. H. MACKAY

At the opening, Mr. Helman raised a preliminary objection on behalf of the Mayor. Referring to Section 728 (1) of the City Act under which the Inquiry was being held, he argued that the sub-section permitted two kinds of an investigation.

Paragraph (a) of subsection 1 of Section 728 relates to an alleged malfeasance, breach of trust or other misconduct on the part of a member of the council, a commissioner or other official, an employee or agent of the city, or any person having a contract therewith in relation to the duties or obligations of such person to the city.

Paragraph (b) of the subsection relates to any matter connected with the good government of the city or the conduct of any part of the public business thereof.

Mr. Helman argued that if the Mayor or anyone else was to be charged with malfeasance, breach of trust or other misconduct, then the Inquiry should be held under the provisions of paragraph (a). In such event, the person charged should be supplied with particulars of the alleged misconduct; in other words, particulars in the form of definite charges should be supplied. He said that otherwise the Inquiry would be in the nature of "a fishing expedition" and would be unfair to any person whose conduct

Preliminary Objection by Mr. S. J. Helman, Q.C.,
on behalf of Mayor D. H. Mackay.

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was called into question.

On the other hand, if the Inquiry was to deal merely with good government or any part of the public business of the city, then it should deal with modes of procedure in civic administration and other related subjects and should not deal with misconduct of individuals.

He argued that the wording of the Order governing this Inquiry was an attempt to cover charges which should be taken under paragraph (a) by making them a part of an inquiry under paragraph (b).

In reply Mr. McGillivray stated that any inquiry might involve personalities and that this Inquiry was not being held for the purpose of exclusively investigating the actions of the Mayor.

I refused to uphold the objections made by Mr. Helman. I pointed out that I had been instructed by the Attorney General to hold an Inquiry in accordance with the terms set out in his order. Section 728 (1) provides for the appointment of a Judge or other suitable person. I was not sitting in a judicial capacity. I held that if my jurisdiction to proceed was questioned, then the proper remedy was to apply to a proper Court to obtain such Order as a Court might grant. I also pointed out to Mr. Helman that, according to the minutes of the City Council, the Mayor had voted in favor of the Inquiry being held in its

Preliminary Objection by Mr. S. J. Helman, Q.C.,
on behalf of Mayor D. H. Mackay.

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present terms.

Because Mr. Helman and the Court Reporters had made previous commitments with reference to gas and oil Inquiries, and because Mr. McGillivray had not completed his investigations, the Inquiry was adjourned to February 16th, 1959.

The Inquiry was reconvened on February 16th, 1959, and continued through to February 27th. A further adjournment to April 6th was made necessary because counsel and the Court Reporters were engaged in oil and gas hearings. Hearings were held from April 6th to April 17th, from April 22nd to April 24th, April 30th, and the final session was held on May 1st.

Sessions of the Inquiry were held on a total of 26 days; 275 exhibits were filed.

3,275 pages of evidence and argument were taken by the Court Reporters.

I have divided my report into headings covering the various items which were the subject matter of the Inquiry.

PRINTING CONTRACTS

A suggestion was made that Printing Contracts granted by the City of Calgary should be a subject matter of the Inquiry.

The suggestion was made on the basis of two circumstances.

- (1) Albertan Job Press had received a very large amount of City business;
- (2) Alderman Watson owned an interest in Albertan Job Press.

Mr. McGillivray made a complete investigation of the matter. He asked for and obtained the co-operation of Calgary Graphic Arts Association. This latter group is the Association of printers in the City. The Association appointed a committee who investigated the matter and submitted a report to Mr. McGillivray. The City Purchasing Agent also submitted a complete report to Mr. McGillivray.

These reports were filed with me and Mr. McGillivray made a statement giving in detail an account of the investigation which he had made.

The reports and the statement of Mr. McGillivray showed the following facts:

- (1) Alderman Watson held less than 25% interest in Albertan Job Press. The Company was therefore not prohibited from doing business with the City (Section

98 (a) of City Act).

- (2) Albertan Job Press has done a large amount of the City business for many years, including many years prior to the time Alderman Watson became a member of the City Council.
- (3) The Committee appointed by the printers made the following report:
 - (a) There was no evidence that any person misused his position in order to obtain an unfair advantage in securing printing orders.
 - (b) There were complaints of the following:
 - (i) Difficulty in obtaining good copies from which to work;
 - (ii) Not being advised when tenders not accepted;
 - (iii) In awarding work, failure to consider amount of taxes being paid by various plants.
 - (iv) No orders (without tender) were obtained by some printers.
 - (v) Advisability of City operating own printing plant.
 - (c) The Printers felt that the City was obtaining its printing at too cheap a price.
- (4) There was no evidence that the Department was avoiding tenders by a system of re-orders. Re-orders were made because:
 - (a) To conserve space;
 - (b) To avoid loss arising from changes in forms.

- (5) Albertan Job Press received some of the City business because:
- (a) It rendered excellent service;
 - (b) It was familiar with City business;
 - (c) It was located nearby City Hall.
- (6) Mr. McGillivray placed all the facts which he had gathered before the people who had suggested an investigation of printing contracts. These people agreed that no useful purpose would be served in pursuing the matter further.

I ruled on April 22nd, 1959, that if no one appeared by April 24th, 1959, asking for a further inquiry, I would not ask that further evidence be produced. No one appeared and on April 24th the matter was considered closed.

Mr. McGillivray advised me that the procedure for tendering had been improved. I note that Page 7 of Chapter 27 of the Administration Manual now states that tenders must be called for all printing in excess of \$50.00 provided that the good operation of the City is not impaired by so doing.

: : : : : : : : : : :

LAND AND RENTAL DEPARTMENT

The Land and Rental Department is operated by a Land Superintendent, with an Assistant Superintendent, 3 clerks and 2 clerk stenographers. The 1959 budget calls for total wages of \$34,322.00 and office expenses and car allowances totalling \$5,243.00.

In the years 1953 to 1957 inclusive (I do not have the 1958 figures), the Land Department sold city lands for a total selling price of \$6,721,946.10. (Auditors' reports for the years 1953 to 1957).

The present Superintendent, Russell Riley, became Superintendent in 1952.

The policy regarding sale of city lands is set by City Council. The Council is guided by the advice of a Land Committee which is composed of the Mayor and 4 Councilors. The Land Committee in turn is guided by the advice of the Land Superintendent.

The Council, Committee and Superintendent have been beset with many difficulties in endeavouring to set a policy from time to time which would be fair to:

- (a) The City and its taxpayers as a whole;
- (b) The private individual who wished to purchase a site for his own house;
- (c) Contractors, realtors and other developers who wished to build homes for resale or to build or develop commercial areas.

The City had to keep in mind three ideas:

- (1) In selling assets owned by the City, the City should obtain the best possible price.
- (2) If land costs are too high, then the value of the improvements have to be reduced in order to keep price of homes within the ability of the average citizen to buy.
- (3) Prevent speculative profits being made on the purchase of city owned property.

The following is a summary of the evidence given with reference to general policy and also with reference to some specific sales or developments.

(a) RESIDENTIAL LANDS

Prior to September, 1948, residential lots were sold at 50% of the assessed value with a commitment by the purchaser to build a house.

On September 13th, 1950, the building commitment was abolished and the price was set at the full assessed value.

A new subdivision, Nob Hill, was registered in 1950. The lots were advertised for sale by tender. The choice lots were sold but the rest were not sold immediately.

At that time when a new subdivision was being opened, a tentative plan would be prepared and lists of

applicants were kept and lots were sold before the plan was registered.

(1) TECUMSEH ROAD

For example, in the fall of 1950, a tentative plan of subdivision of two blocks in Tecumseh Road was prepared. These lots were not put on the market by advertising or in any other formal manner. Twenty-six lots were sold, the first one being purchased on November 17th, 1950, the last one being purchased on May 31st, 1951. Three of the lots were purchased by employees of the City Land Department, three others by City employees, nine were purchased by contractors and builders. Some of the lots were resold by the purchasers before any improvements were built and substantial profits were made by the initial purchasers, including profits of \$800.00, \$750.00, \$900.00, \$1400.00; a double sale on one lot showing profits of \$550.00 and \$750.00, a triple sale on one lot showing profits of \$125.00, \$475.00 and \$550.00, and finally, one lot was held until 1957 and sold for \$4,000.00. The three Land Department employees did not resell before building homes.

The plan was registered in the Land Titles Office on August 22nd, 1951, nearly three months after the last lot had been sold.

This procedure of keeping lists of prospective

Land Department.

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purchasers led to trouble and when Mr. Riley became Land Superintendent in 1952, he discontinued the practice.

In April, 1951, Council considered the opening of the Capital Hill and Hounsfield Heights subdivisions. On April 10th, 1951, it adopted a new policy whereby in future all city land was to be sold at an appraised valuation to be determined by the Land Department Superintendent and not less than 15% of any subdivision was set aside for individual purchase.

On December 22nd, 1952, Council revised the necessity of a building commitment. After that date a purchaser had to complete a foundation within a year. Transfer of the land would not be issued until the rough roof was on the house or a mortgage had been approved.

In 1953 the City still owned some lots scattered throughout the city and in addition opened up the Spruce Cliff and Britannia subdivisions. With reference to Spruce Cliff subdivision an advertisement was placed in the newspapers stating that the 230 lots would be offered for sale on a first come first served basis at 8.30 on August 23rd, 1953. There was a line-up for the best lots. Individual purchasers were given the first opportunity to purchase half of the lots on a basis of one lot per person. A purchaser was permitted to assign his agreement before building his house on payment to the city of an assignment of \$50.00.

The first effort to open Britannia was not successful. City Council instructed the Land Department that when fifty applications were received, then the subdivision could be opened. This was done in May, 1954, and lots were sold at prices ranging from \$2,000.00 to \$5,000.00.

Mr. Riley stated that no record is now kept of the names of persons who ask about lots which are not for sale at the time of inquiry. He said that a person interested in purchasing a particular site would have to keep inquiring personally or by telephone to find out if the site was opened for sale.

During the course of the Inquiry, Mr. McGillivray received inquiries from citizens as to the method used in selling sites in certain subdivisions. As a result, he asked Mr. Riley questions concerning the following sales:

(11) SALE OF LOTS ON CRESCENT BOULEVARD TO J.H.
TIMMINS CONSTRUCTION LTD. IN 1955.

On July 20th, 1955, J. H. Timmins Construction Ltd. offered in writing to purchase these lots for \$1200.00 per site. They agreed to carry out all necessary grading which they estimated would cost \$3,600.00. The offer was referred to the Land Committee who set a price of \$2,700.00 per site for 18 sites. Asked why this land was not put to tender, the Land Superintendent stated that it was a rough

Land Department.

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parcel of land requiring development by one developer. He said that it had never been designated as a park. It would appear that having regard to prices paid for other lots in the city, these sites were sold at a fair price.

(iii) SALE OF SIXTEEN LOTS IN LYNWOOD DISTRICT

These lots were advertised for sale in the Herald and Albertan on March 18th, 1959, opening of sale to be 8.30 a.m. on March 20th, 1959. Prices ranged from \$800.00 to \$1,015.00. A line formed in the City Hall the evening of March 19th and prospective purchasers stayed in line all night. The line is managed by the first person who appears in the line-up. He makes out a list of priority according to the time of appearance in the line-up and hands this list to the Land Department the next morning.

The Land Department uses this list in determining the priority of applicants. It was alleged that 14 of the 16 lots were purchased by stand-ins for two real estate firms. At the time of giving evidence, Mr. Riley could not state whether there was any truth in this allegation. He said an investigation was being made. He stated, however, he knew of no way in which this could be prevented. If the allegation is true, it would appear that realtors and contractors were willing to go to more trouble in obtaining sites than private individuals and that,

actually, the demand for lots by private individuals was not too great in that particular area.

(iv) LOTS IN VICINITY OF LANSDOWNE AVENUE

This site is being replotted - There will be 17 sites - They will be sold by tender as soon as the Engineering Department advises of the cost of utilities.

CONCLUSION

No evidence whatever was given showing that any person in the Land Department had received gifts, favours, or other accommodation from any person or company having dealings with the department.

I am of the opinion that some of the procedures adopted by the Department over the years would lead to prospective purchasers feeling that they had not received fair treatment.

The idea of asking a person to inquire continuously over a period of time whether certain properties are going to be offered for sale can only lead to trouble. A person may inquire on many occasions, then desist for a while and on inquiring again find the property has been sold to someone else.

The method in which the Tecumseh Road property was sold would certainly lead to charges of favoritism.

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I realize that in a city the size of Calgary, newspaper advertising can be expensive if sale notices are to be large enough to attract attention. But surely a bulletin board could be placed outside the Land Office and notices of sale of lots posted. Again moveable signs could be placed on properties advertising their sale and giving prospective purchasers sufficient time to arrange purchase.

In case of residential lands, where it is not the wish to sell by tender and thereby raise the price too high for the individual purchaser, a system of drawing by lot could be considered.

None of these suggestions may have any merit. I know in some cases the Land Department will be blamed by people who, themselves, are looking for preferential treatment. But I do suggest that the Commissioners and the Superintendent of the Land Department should re-examine the procedures now in effect to see whether they can be improved so as to eliminate some of the causes of criticism. There will always be criticism, no matter what policy is adopted.

(b) COMMERCIAL LAND

SARCEE TRIANGLE

On the 23rd day of January, 1956, the City registered in the Land Titles Office a plan described as "South Richmond Park". The land in the plan is a small

acreage containing $13\frac{1}{2}$ acres plus streets. The land in the southern part of the plan is triangular in shape containing about 5 acres. It is described as Block 1. I will hereafter refer to it as "the Sarcee Triangle". It is bounded on the north by 45th Avenue, S.W. The eastern boundary on Sarcee Road, and the western boundary on 37th Street, S.W. meet at the apex of the triangle.

Block 1 is a low lying piece of land which in the past accumulated run-off surface water. Witnesses stated that it has been used by wild ducks. The balance of 8 acres shown in the plan has been used by a low rental housing project housing 200 families.

There is a large area of land to the east of this property which is owned by the Department of National Defence and is known as Currie Barracks. Another military establishment, Sarcee Camp, lies a short distance to the south. There is a vacant area to the north which is under expropriation by the Crown to protect safe landing of military aircraft at Currie Barracks.

The balance of the surrounding area has developed very rapidly as residential districts known as South Richmond and Glamorgan. Also 150 families of military personnel have been housed in Sarcee Camp and housing for a further 150 families in the Camp is anticipated.

New land developments are now subject to rigid

zoning regulations. Modern city planning envisages areas set aside for industrial and/or commercial development. In order to provide people living in residential areas with facilities for purchasing the everyday necessities of life, zoning authorities space small commercial areas in residential zones. In the past few years, large companies have rapidly expanded chain shopping centres and super-markets throughout the cities of Canada and the United States. Competition among these companies is very keen. Once a district has been zoned a company can be fairly certain of the amount of competition and the nearness of competition by examining the zoning map and regulations. Depending on varying circumstances, a greater or smaller monopoly is created when a shopping centre or super-market company obtains a commercial area in a residential district.

This has been shown very conclusively in Calgary where companies have paid as high as \$35,000.00 an acre for a commercial site in a residential area. Surrounding residential sites sell from \$6,000.00 to \$10,000.00 an acre. It is the zoning as a commercial site which give these small areas such a high value in the eyes of such concerns as Safeways, Loblaws, Dominion Stores, etc.

The zoning authorities created a commercial area at the corner of Richmond Road and 37th Street, S.W. This area is situated about one-half mile north of the Sarcee

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Triangle. This land containing 9.5 acres was purchased by G. L. Marks through his company, H. M. Holdings Ltd., in January, 1959, for \$230,000.00 of which \$191,000.00 was attributed to land value. This price works out to slightly in excess of \$20,000.00 an acre. Mr. Marks sold three-and-a-half acres of this property to Loblaw's for \$130,000.00 or over \$35,000.00 an acre.

Mr. Riley, Superintendent of the Land Department, said that it is proposed to zone an area between the Sarcee Triangle and Sarcee Camp as commercial (C.2). There is a small piece of property zoned as commercial at the corner of 46th Avenue and 37th Street, S.W. This property is across the street from the Sarcee Triangle. Mr. Marks stated that the asking price of this 1.5 acres is \$45,000.00. According to plans submitted by Mr. Riley, there will be two small commercial areas in the new development south of Currie Barracks and the next large shopping centre is planned for 24th Street, S.W. and about 60th Avenue, S.W., a distance of about 2 miles from the Sarcee Triangle.

Some time prior to June 24th, 1958, Mr. H. Singer of Warner Holdings, Ltd., called on Mr. Riley and said that he was interested in buying the Sarcee Triangle for the purpose of development of an apartment project with some local commercial development. Mr. Riley brought the matter to the Land Committee of the City Council on June 24th,

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1958, stating that an application had been received from Warner Holdings, Ltd., to purchase the property for an apartment, project and shopping centre.

It is presumed that the Planning Department considered the area to be suitable for apartment buildings when they recommended that the area be zoned R.5 after the period of Interim Development Control.

The report of the Land Committee stated that re-zoning would be required before any portion could be utilized for commercial purposes. The report also stated that the land was low-lying and would require either fill or a sewer lift; also, a change would be required by the Engineering Department to round off the southern tip of the property. The Land Committee agreed that the necessary advertisements be made for the purpose of re-zoning for commercial purposes.

Mr. Riley wrote to Warner Holdings, Ltd. on July 4th, 1958, asking for plans so that they could be presented to the Planning Department.

On September 18th, 1958, a firm of architects and engineers, Abugov and Sunderland, gave a written report to Mr. Singer covering the land. In their report, this firm stated that there were two easements and a possibility of another easement for sewers crossing the property, a street widening of 17 feet on 37th Street; a possible

cloverleaf at the southern tip and the necessity of sewage pumps. Because of these facts, there would be an inherent difficulty in placing buildings, the development of the property would be expensive and that while development was not impossible, the land would have to be purchased at an extremely low value to deserve any consideration.

Armed with this expert opinion, the solicitor for Warner Holdings, Ltd. made a formal offer to purchase this land on October 15th, 1958. The offer was accompanied by a copy of the Engineer's report. The Company offered \$2,500.00 an acre and stated that it intended to construct a neighbourhood shopping centre on part of the property and apartment blocks on the balance.

On October 31st, 1958, Mr. Riley replied to the letter of the solicitor for the Company and requested sketches showing the location of the commercial development and apartment development. He pointed out that the application for re-zoning of portions of the property would have to go before the Technical Planning Board and then on to Council for a public hearing.

On December 9th, 1958, Warner Holdings, Ltd. sent their proposed plans to Mr. Riley. The plans showed that the Company had altered their ideas of development in a very radical manner. They abandoned the idea of apartment blocks and planned instead to develop the whole

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area as a shopping centre including a supermarket, three sets of stores, a service station and the balance for parking. It was planned that only the supermarket and some of the stores would be built at the present time, totalling not less than 20,000 square feet. The letter asked for immediate action as the Company had very interested tenants. The letter also asked that in pricing the property the city keep in mind the necessity of considerable fill and a sewer lift.

The Land Committee met on December 11th, 1958. Mayor Mackay, Aldermen Brecken, McIntosh, Tennant, Commissioners Batchelor and Thomas were present. Mr. Riley recommended that the offer of \$2,500.00 an acre be accepted.

The Committee's report again stated that the land was low-lying, would require considerable fill and a sewer lift and that the city would retain the southern tip in order to round off the roadway. Mr. Riley was authorized to offer the property to the Company at a price of \$25,000.00 or \$5,000.00 per acre.

This offer was communicated to the Company by a letter from Mr. Riley dated December 18th, 1958. On December 30th, 1958, the solicitor for the Company wrote to the Land Department stating that the Company was most pleased that the City was prepared to sell the property for \$25,000.00. The solicitor inquired if the city would

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accept \$2,500.00 on account and the balance on completion of the centre, or not later than December 31st, 1959.

This request for a small down payment was refused by the Land Committee on January 13th, 1959, and on January 31st, 1959, the solicitor for the Company was advised that the regular terms of sale would have to be adhered to.

On February 2nd, 1959, the solicitor for the Company forwarded a cheque of the Company to the City in the amount of \$8,334.00 representing approximately one-third of the purchase price. The City was asked to prepare an agreement for sale.

On February 3rd, 1959, the Land Department forwarded the cheque to the City Treasurer asking that the cheque be held until the land was re-zoned. There is a memo in ink on the bottom of the Land Department's copy of this letter stating that zoning C.1 will be asked for and that J. Singer and Walter Barron request that they be phoned before the cheque is presented when zoning is in order.

On the same day the Land Department wrote to Mr. Martin, City Planner, setting out the fact of the proposed sale to Warner Holdings, Ltd., the proposed use of the land, and asking Mr. Martin to have the property re-zoned as C.1 as quickly as possible.

On February 12th, 1959, Mr. Riley placed a

written memorandum in the file. It stated that the Planning Department and the Technical Planning Board had agreed under date of February 4th to re-zone the property as C.1.

Warner Holdings, Ltd., placed signs on the property indicating that a Safeway Store would be built on the location. Immediately a deluge of complaints were received by City Departments. Mr. Gardiner, President of the Glamorgan Association, stated that he had been told by Sullivan Construction, Ltd. (the developer and contractor of adjoining homes) that this property was park land. Mr. Sullivan denied this statement. There was a further misunderstanding as park employees had been seen pumping water from the site. The Park Superintendent stated that this had been done in error.

On February 19th, 1959, the City Engineer wrote to the Land Superintendent enclosing a plan of the property. The City Engineer requested that instead of cutting off 80 feet from the apex of the triangle, 46th Avenue, S.W., with a width of 56 feet, should be projected through the property from 37th St. S.W., to Sarcee Road.

Apparently this change had been discussed with the engineers for Warner Holdings Ltd., because, on the same day, February 19th, 1959, Messrs. Abugov and Sunderland forwarded two copies of the plan of the shopping centre, which showed the extension of 46th Street, S.W.

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This plan showed that a supermarket and twenty smaller stores would be built immediately and parking provided for 245 cars. The plan showed future development of twelve stores, a service station, a restaurant, bowling alley, a Dairy Queen and additional parking.

On February 23rd, 1959, the Land Department replied and again pointed out the fact that the property had to be re-zoned and that this could not be finalized sooner than March 30th.

In the meantime, as previously stated, Mr. Marks had purchased the property at Richmond Road and 37th Street, S.W. for \$20,000.00 an acre. He said that he had checked the Sarcee Triangle and had noted that it was zoned R.4 or R.5. He saw the advertisement in the newspaper concerning the re-zoning of this property to C.1. He examined the site again and saw the Safeway sign with a phone number on it. He called the number and asked if any of the land was for sale. He was informed that the service station site of approximately one acre was for sale at \$20,000.00. He said he then telephoned City officials and after some difficulty obtained the details of the proposed sale to Warner Holdings, Ltd. He then telephoned Alderman Brecken and after a discussion as to the necessity of calling for tenders on the sale of commercial land, Mr. Marks lost his temper. Mr. Brecken arranged for a meeting of the

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Land Committee which was held on March 24th, 1959. This meeting was attended by four members of the Committee, and Commissioners Batchelor and Thomas. Mr. Marks attended the meeting and protested the action of the City in selling this land for \$5,000.00 per acre and arranging to have it re-zoned for commercial purposes, instead of following the usual policy of calling for tenders on commercial sites.

The Committee, relying on their own personal observations of the site, and on the technical advice forwarded by the engineers for Warner Holdings Ltd., adhered to the view that the land was low-lying and required special treatment as to installation of utilities. The Committee further stated that when a purchaser offered to buy the property for apartment and commercial purposes, the committee treated the applications as a special case and agreed to sell the land to Warner Holdings, Ltd. The Committee instructed the Commissioners to draw up an agreement and bring it back to the Committee. In the meantime, the purchaser's cheque was not to be accepted until a satisfactory agreement was completed. At the meeting, Mr. Marks indicated that if tenders were called, he was willing to bid \$10,000.00 an acre for the site.

The public hearing on the re-zoning application was heard by the City Council. Mr. Marks appeared and again protested. The City Council passed the by-law

re-zoning the property to C.1.

On April 2nd, 1959, solicitors for H & M Holdings, Ltd., (Mr. Marks' company) issued a notice of motion in the Supreme Court of Alberta asking for an injunction restraining the City from selling the property. This injunction was granted on April 6th, 1959, and is still in effect pending a judgment from the Supreme Court.

On March 26th, 1959, Mr. McGillivray, Counsel for the City on this Inquiry, requested three realtors to value the property as a commercial property. These valuations were requested from J. V. Hunt, Elmer Sanders and A. M. Edwards. The Land Superintendent, Mr. Riley, obtained a valuation from a land valuator, E. B. Nowers.

The following evidence was given as to the value of the property:

Mr. J. V. Hunt of Cote & Hunt, Ltd., has been a realtor in Calgary since 1945. Mr. McGillivray asked him to give a valuation of the property as a commercial property, keeping in mind easements, the fact that it was low-lying and the possibility of fill and the use of sewer pumps.

Mr. Hunt placed a valuation of \$13,000.00 an acre on the property. He estimated that it would cost \$2,000.00 an acre for fill and other items not ordinarily required on a level piece of ground.

He gave a list of recent listings of commercial lands including the 1.25 acres across the street from this property and the Richmond Road property bought by Marks. In addition, he listed 8.6 acres at Elbow Drive and 102nd Street, S.W., with an asking price of \$26,620.00 per acre, 1.7 acres near Chinook Shopping Centre with an asking price of \$50,000.00. He listed recent sales of 2 acres at Elbow Drive and 82nd Avenue at \$58,000.00, and 6 acres at 16th Avenue, N.E. and Trans-Canada Highway at \$25,000.00 an acre.

Mr. E. E. Sanders of Topley & Sanders has been a realtor in Calgary for fifteen years. He was asked to give a valuation on the same basis as Mr. Hunt.

On the understanding that a sewer pump would be required and that there was a possibility that the water table would be at a fairly high level, he placed a market value of \$15,000.00 per acre on the land less the cost of making it suitable for development. This cost he set at \$5,500.00 per acre but without verification by technical information.

Mr. Sanders divided shopping centre into three categories, regional, community and neighbourhood. Some of the regional sites have sold for \$35,000.00 per acre. He placed this property in the neighbourhood category and said this category commands the price of \$15,000.00 per acre. He said that there is a very large and very strong

demand for these sites in the City of Calgary. He said that the value of land is in its use and that shopping centre use sets a high value on land.

Mr. Aubrey M. Edwards made an appraisal on the same basis. He mentioned the possibility of pumps for water and sewer as well as the necessity of fill. He stated that the land was ideally situated for a supermarket site. He placed a price of \$14,000.00 per acre on the land, after taking into consideration that considerable expense would be involved for improving the land to its highest and best use.

Mr. Edwards listed sales of comparative land of similar nature.

- (1) 6.42 acres bought in 1954 on Macleod Trail for \$15,000.00 per acre;
- (2) 6.34 acres bought in 1955 at 16th Avenue and 6th Street, N.E., at \$21,000.00 per acre;
- (3) 3 acres bought in 1958 on Macleod Trail at \$40,000.00 per acre;
- (4) 3.02 acres bought in 1958 at 6817 on Macleod Trail at over \$30,000.00 per acre.
- (5) 2.28 acres bought in January, 1959, in Cambrian Place from the City for \$45,000.00, including utilities at about \$8,000.00. This is the property bought by Warner Holdings, Ltd. from the city on tender at the same time as they were negotiating for the Sarcee Triangle.

Mr. Nowers has been a land valuator in Calgary for 54 years. He placed a valuation of \$30,000.00 on the site. His report states that the site is in the extreme

southwest corner of the developed area of the City. It adjoins Almer Park which houses 200 families in a low cost housing development. He said that development to the west is negligible and that development to the north and northeast is of a cheaper sort. He said that Sarcee Road is 12 feet above 37th Street, S.W., at about the middle of the triangular site. The surface is dotted with boulders, many of them large. He said that the fact that Safeway Stores had agreed to lease a store is not at present helpful to any extent in determining the values of the property. It would take probably not less than \$15,000.00 for filling, grading, etc.

In examination, Mr. Nowers stated that if the land had been flat and did not have the low-lying characteristics, an owner might get \$50,000.00 or \$60,000.00 for the site. He also said that in valuing property you try to ascertain its real value as distinct from what you might get for it and that prices paid are often in excess of values.

Mr. J. Abugov gave evidence as to the cost of preparing the site for a shopping centre. He said that in his report of September 18th, 1958, he advised Mr. Singer not to buy the land. He said that the cost of removing the top soil and bringing on to the site an equal amount of dirt would be \$61,600.00. Asked if Mr. Singer would do this in the course of building a shopping centre, he

said, not necessarily so. He said he had used these figures to indicate to Mr. Singer that he should not buy this land originally because at that time the city did not require storm sewers for parking lots whereas now storm sewers are required. Finally, Mr. Abugov stated that dirt would be removed from the parking lot area and then it would be backfilled. He further said that if this was a wet lot, the dirt underneath would have to be removed.

The report of Materials Testing Laboratories, Ltd. was filed. They carried out a survey of soil conditions between January 14th and 19th, 1959.

With reference to moisture content, the report read as follows:

" Soil moisture contents vary considerably, both horizontally and vertically. Maximum values of 30 per cent were measured in the clay at depths of approximately 5 feet. Moisture contents in the sand was consistently low. No ground water was encountered on the site at the time of the investigation."

As to foundation conditions:

" Foundation conditions at this site are relatively good and suitable for the proposed shopping centre development. Adequate bearing is available at shallow depth for the support of spread footings and it is recommended that this type of design be used."

With reference to fill:

" In the event that it is planned to place any fill to raise the grade the existing top soil should be stripped and stockpiled. It would have some value for landscaping purposes."

With reference to surface water:

" Present surface contours are such that spring runoff drainage will probably collect in the area adjacent to the Test Hole 4. If construction is commenced at that time, it may be found that soil conditions are less favourable. If this occurs we would like to be advised in order that a visit can be made to the site. As soon as the final grading and surface drainage measures are introduced the problem will disappear but we raise the point in case there is some difficulty during construction."

Mr. Marks produced a report from Haddin, Davis and Brown (Alberta) Ltd. The report included a print showing elevations of the property. The report showed the elevations on Sarcee Road start at (36) 51.25 feet on the northern end of the premises and increase to 3654.65 at the southern end of Sarcee Road adjoining the premises. The elevations on 37th Street, S.W., are shown at 3644.95 and 3645.45 and there is one lower elevation in the site of 3642.65. There is a general slope from a high on

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Sarcee Road to a low on 37th Street, S.W. The report set out that if a building without basement was constructed backing on Sarcee Road and relatively close to 45th Avenue, S.W., connection to the sanitary sewer by gravity was possible. Mr. Abugov stated that the Safeway Store would not have a basement.

Mr. Marks also produced a report from C. B. Bakgaard of Bakgaard Construction Co. Ltd. This report stated that if a level of 48.00 were used for the entire area, it would involve moving approximately 8,000 cubic yards of dirt at the going rate of 25 cents or a total cost of about \$2,000.00. The report stated that it should not be necessary to bring in fill from elsewhere.

CONCLUSION

1. The property was zoned R.5 when the zoning Map of the City was finalized. Any person examining the map at the City Hall, or copies distributed to realtors, etc., would reasonably presume that the category of R.5 had been given to this property after proper consideration by the planning experts and that if the property was purchased, buildings would have to conform with the regulations.

2. It may well be that for a small commercial area and apartments the property was only worth \$5,000.00 per acre.

3. However, when Warner Holdings, Ltd. changed their plans and indicated that they intended to use all of the property as a shopping centre, the City officials and Land Committee should have reviewed the situation.

4. The Land Department officials and the Land Committee knew, or should have known, of the very high prices being paid by super-markets for sites. In fact, the City was selling a site in another part of the City at the very same time for over \$20,000.00 per acre.

5. There are situations where the City may be justified in taking less than the market value for land when greater benefits will accrue in the future. The North Hill Shopping Centre is an example. However, with reference to the Sarcee Site, once the City decided to permit a full scale shopping centre on this property, a land value similar to values of comparable shopping centres in other parts of the City was created. There was no special reason why this value should not have been obtained by the City. That the value was created was shown by the evidence of Mr. Marks that he was told that the service station site of approximately one acre was for sale at a price of \$20,000.00.

6. The Land Superintendent and the Land Sales Committee paid too much attention to the unfavourable report of Abugov and Sunderland and continued to be influenced in this thinking by this report after Warner Holdings,

Ltd. submitted plans for a complete shopping centre.

7. On July 23rd, 1951, City Council adopted a policy which stated that commercial sites in new subdivisions be sold by tender. This policy is still in effect.

The Sarcee Triangle is included in a plan which was registered in 1956. The property to the north on which low rental housing is situated was also included in the plan. The housing developments to the west of the property are contained in new subdivisions but these subdivisions are privately owned.

It was argued that it was not necessary to sell this property by tender because it was not situated in a new subdivision.

This question is open to argument. But the resulting dispute shows the danger of making exceptions to general policy when there is a possibility of a difference of opinion.

8. Every care should be taken not to change rules and regulations for the benefit of one person or company. There is a saying that you should not change the rules in the middle of the game.

By agreeing to sell this land on condition of it being re-zoned to C.1 and on condition that the City would apply to have it re-zoned, the City conferred a special benefit on Warner Holdings, Ltd. I am of the

opinion that it was a benefit having a very substantial value in view of the prices being paid for other super-market sites in the City. The increase in value was created by the action of the City in its application to re-zone. Any values created by action of the City should accrue to the City itself in respect to City owned lands.

9. There is no suggestion that Mr. Riley or members of the Land Committee were influenced by any improper motives in any decisions they made. I believe they made an error in judgment. No doubt such errors have been made in the past and will be made in the future.

However, the best way to avoid errors and to avoid criticism is to follow the rules and not to make an exception to the rules where such exception will lead to a claim by other citizens that a benefit is being conferred on one person to the exclusion of others.

(c) COMPLAINT OF C. M. CLARKE

Mr. Clarke was the owner of Lots 16 to 20, Block 36, Plan 5454 AC, having a municipal address of 5809 - 1st Street, S.E. He had lived on this property for about thirty years and during most of that time the property was situated at the City limits. The improvements consisted of a house which had been added to from time to time, a combination 2-storey barn garage and two small outbuildings.

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Mr. Clarke had a well and septic tank and no gas. This property is situated in what is now known as the Manchester Industrial Area.

In 1952 the City decided to create this Industrial Area and Mr. Riley, the Land Superintendent, was instructed to assemble the land required for the area. The area had been subdivided into lots. Some lots were privately owned and some privately own lots had homes on them.

On December 24th, 1952, the Land Department wrote to Mr. Clarke advising him that the area had been set aside as a major industrial area and that the City would like to buy his property or negotiate an exchange.

Mr. Clarke stated that he called in response to the letter, obtained a plot plan showing lots available for exchange which plan he returned the next day. On December 29th, 1952, Mr. Clarke wrote to the City stating that he was willing to co-operate to any reasonable extent but he considered it premature to attempt further negotiations at that time.

In September, 1953, Mr. Glenday of the Land Department interviewed Mr. Clarke on two occasions. Mr. Clarke states that Mr. Glenday offered him \$9,000.00 for the property which he refused. On September 17th, 1953, Mr. Glenday made a note on the City file, "Definitely not for sale. If City wishes to expropriate, go ahead".

On February 12th, 1954, a formal offer in writing was made at a price of \$9,000.00 and Mr. Clarke was informed that if settlement could not be made without delay, expropriation proceedings would be taken. On February 18th, 1954, Mr. Clarke wrote to the City refusing to accept the offer.

Expropriation proceedings were taken against Mr. Clarke and three other home owners. On July 12th, 1954, Mr. Clarke surrendered his title to the Land Titles Office.

The expropriation proceedings came before a District Court Judge, who, after hearing evidence, allowed the following compensation to Mr. Clarke for his property:

Land	\$1,500.00
House	8,500.00
Garage	650.00
Thermopane Windows	100.00
Well	600.00
Septic Tank and Disposal Field	300.00
Outbuildings	100.00
10% for compulsory taking	<u>1,175.00</u>
	\$ 12,925.00

Mr. Clarke was permitted to remain on this property, by the City, while he built another house. He moved out of the property about December 15th, 1954, but did not deliver the keys to the City.

Mr. Bruce M. Barton was a Clerk Collector in the City Land Department at the time. He was instructed to pick up the keys of the house from Mr. Clarke and to take a look at the house and report to Mr. Riley.

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Mr. Barton inspected the house on January 14th, 1955. He verbally reported to Mr. Riley that all light fixtures had been removed; the plumbing frozen solid; pipes removed from the kitchen sink; the complete pressure system gone; a portion of the chimney flue used for the fireplace removed.

These facts were reported to Mr. Clarke and some dispute arose.

On February 28th, 1955, Mr. Riley asked Mr. Barton to put this report in writing and on the same day, Mr. Barton made an offer in writing of \$400.00 to remove the house. This offer was referred to the City Commissioners on March 11th. On April 1st the Commissioners instructed Mr. Riley to call for tenders for removal of the house.

On April 4th, 1955, advertisements were placed in the Herald and Albertan calling for tenders for the house and outbuildings, for removal or demolition thereof within 30 days with land to be left clear of all debris and basement to be filled in, to the satisfaction of the City Engineer. The advertisement stated that the property would be open for inspection April 6th from 2 p.m. to 4 p.m., tenders to close April 11th.

Mr. Barton was sent out to open the property for inspection on April 6th. He reported that only one

person came to inspect the house. Mr. Barton did not consider him to be a serious inquirer and made no effort to show him the buildings.

No tenders were received. At the close of tenders on April 11th, Mr. Barton immediately that afternoon made an offer of \$200.00 for the Clarke house and outbuildings. I take it that the offer was made after tenders closed because Mr. Barton says he did not submit a tender.

Mr. Barton purchased a lot from the City at 328 - 34th Avenue, N.E., being in an area reserved by the City for persons to move homes to. He had a foundation built and moved the Clarke house to this location. He demolished the garage barn giving the door to his father. He sold the two small outbuildings for \$15.00. He stated that he had a cash outlay of \$7,646.80. He moved into the house in September, 1955, and then sold the premises for \$11,000.00, giving up possession on December 31st, 1955. He stated that he did not feel that he had made a profit as he did a lot of work himself on the house between May and September.

In his evidence, Mr. Riley, the Land Superintendent, stated that it was very difficult to obtain any money from purchasers of houses which have to be removed from locations to be used for other purposes. In some cases it has been necessary to burn the buildings. As an example, Mr. Riley cited the case of six houses being purchased at the present

time at 16th Street, S.E., and on which the City had options totalling \$72,000.00. Campbell & Haliburton, who have been acting for the City in obtaining the options, state that the City can only expect to sell all six houses for a total price of \$1,050.00. He stated that real estate agents are not interested in endeavouring to sell such houses. It must also be remembered that the City will only permit such buildings to be moved to very restricted areas in the City.

CONCLUSION

After considering all the evidence, I find that Barton did not obtain an improper advantage in purchasing these buildings for \$200.00. He took a gamble on being able to move the house across the City and he spent a large sum of money in placing it on a foundation.

There are, however, two or three observations which might be made. Mr. Riley must have known that Mr. Barton was interested in buying the buildings. There must have been discussions as to the purchase of the lot at 328 - 34th Avenue, N.E. Without in any way challenging the good faith of Mr. Barton, and I do not do so, I believe that Mr. Riley should have:

- (1) made a personal inspection of the Clarke house after Barton reported the damage. The procedure

of taking a written report from Barton on February 28th and on the same day taking an offer from Barton to purchase the buildings for \$400.00 could lead to a suggestion that Barton's report on that date was a self-serving document.

- (2) sent someone else other than Barton to the house on April 6th when it was open to inspection of prospective purchasers.
- (3) had Mr. Barton make a proper tender of \$200.00 on April 11th rather than wait until tenders closed and then accept an offer on the same day from Barton. As a result of this procedure, Barton did not have to and did not demolish the foundation of the house.

Mr. Clarke in his evidence suggested that he did not receive proper consideration from City officials in negotiations prior to the expropriation proceedings. He suggested that Mr. Riley never came on the place until after the acquisition, that he, Clarke, asked for \$24,000.00, then \$21,000.00, but that the City offered him \$9,000.00 and refused to negotiate further; then he tried to see Commissioner Strong but that he was advised that the Commissioner had reviewed the file and did not wish to see him; that he complained to several aldermen but did not get any satisfactory answers.

Now, it may be that this is evidence from a man whose ordinary thinking has been colored by his feeling of being ill-treated. It may be, also, that all the facts concerning negotiations before expropriation were not placed before me.

However, I suggest that the very greatest of tact should be used in a situation such as this. Mr. Clarke had lived in these premises for thirty years. This was home and to older people home has a sentimental value and many older people do not wish to move from or give up the home in which they have spent the greater part of their lives.

When a home is being taken from a citizen and if it appears expropriation may be necessary, then the negotiations should be conducted by the City at the highest level. I believe that the negotiations should be handled in the first instance by the Land Superintendent himself, that proper valuations should be obtained, and that before the final step is taken, a final interview should be held with the citizen by one of the Commissioners.

The power of expropriation of a person's home is one of the most serious powers exercised by the State against one of its citizens. It should not be done in an off-handed manner. Every effort should be made to avoid it, and if, in the end, the step must be taken, then the citizen should be clearly told that the civic government

has a duty to the taxpayers as a whole to pay only a fair price for the property plus 10% for compulsory taking. It is very easy to fall into the worst habits of bureaucracy. Every so often civil servants in charge of such an unpleasant task as expropriation of a citizen's home should ask themselves, "How would I like to be treated if the City were taking my home against my will?"

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THE ACQUISITION BY THE CHURCH OF JESUS CHRIST
of Latter Day Saints, commonly known as the
"Mormon Church" of land, on the site reserved
for the University of Alberta in the City of
Calgary.

Mr. Helman, on behalf of Mayor Mackay objected to an Inquiry into the acquisition of the land by the Mormon Church. He stated that the Church had no dealing with the City when it acquired the land and therefore the question did not come within the wording,

"and whether any person having or having had dealings with the City by way of contract or otherwise, had derived any improper advantage through the position with the City of any present or former member of the Council.....".

He also stated that Mayor Mackay did not derive any improper advantage directly or indirectly because the Church had purchased a piece of property from a private individual.

Mr. McGillivray argued that if a member of the City Council, through his position on the Council, obtained an advantage for a church of which he was a member, then he was indirectly getting some advantage through his position with the City.

I did not agree with the argument of Mr. McGillivray. I did hold, however, that, inasmuch as the City had an agreement with the University in which they agreed to assemble land for a University site and that the land acquired by the Church was within the boundaries of the site, I should inquire into the circumstances under which the Church did acquire the property.

Mr. Russell Riley, Superintendent of the Land and Rental Department of the City, stated that the City leased land to the University in 1950 for a term of twenty years. This lease was not filed as an exhibit but in a letter to the Honourable Fred Colbourne, dated March 2nd, 1956, the land in that lease was described as,

"Firstly the North Half of Legal Subdivision" and the whole of legal subdivisions 12, 13 and 14 in Section 30, Township 24, Range 1, W 5th.

Secondly - That part of the North East Quarter of Section 30 lying west of the Banff Highway and North of former 27th Avenue, N.W. containing 68 acres."

Therefore there were approximately 208 acres contained in this first lease. The letter to Mr. Colbourne also stated that the City were holding some 38 acres abutting the leased land on the South East and a print was enclosed with the letter showing certain portions marked in green as being privately owned. Neither the print or a copy of it was filed as an exhibit.

Subsequent to 1950 there is no record of progress until July 22nd, 1955, when the minutes of the Land Committee of the City stated 240 acres lying West of the Banff Trail and North of 24th Avenue had been reserved for a University Site. The minutes also referred to 78 acres, known as the Bennett Estate, which adjoined the property. The Land Committee instructed Mr. Riley to take preliminary steps to acquire the additional land referred to.

On October 29th, 1956, the City purchased a 20-acre parcel in the University site from a private owner for \$25,000.00. No evidence was given as to the legal description of this parcel. I presume that it was the South Half of legal subdivision 11, as the whole of legal subdivision 11 is included in the final 1957 lease, whereas only the North Half of the legal subdivision was included in the 1950 lease. The City informed the University that it had purchased this parcel.

On November 24, 1956, President Stewart of the

University wrote to Mr. Bredin, the City Solicitor, stating in part,

"that if difficulty was experienced in securing title to the smaller parcels in the southern portion of the site, the boundaries might be redrawn so as to exclude these parcels. We believe this would be preferable to paying an exorbitant price or to delaying completion of the agreement."

On the 8th day of April, 1957, Mr. Bredin forwarded to City Council a lease option between the City and the University. In his letter to Council, Mr. Bredin said in part:

" With respect to Parcel 'C', it appears at the present time that the owner wishes to obtain an unreasonable price for this, and the University will not press the City if it cannot be acquired at a reasonable price. The fact that it is now known that it is wanted for university purposes has undoubtedly affected the price, and when it is seen that it is not actually required, it may drop in price. "

The terms of the lease provided that the City leased parcels A and B (as shown on plan attached to the lease) to the University for a term of thirty years at a rental of \$1.00 per year on the undertaking by the

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University to commence building within three years. The University was to be entitled to a transfer of parcel A upon completion of a building or buildings as provided for in the agreement. Parcel B contained 76 acres lying to the north of Parcel A and I presume is the land described as the "Bennett Estate" in the previous correspondence.

The main site is contained in Parcel A. The southern boundary of Parcel A commences at the southeast corner of the North West Quarter of Section 30, and continues along in an easterly direction on the whole of the southern boundary of the North West Quarter and then for a short distance on the southern boundary of the North East Quarter of Section 30. The southern boundary then curves in a northeasterly direction and then easterly until it joins the old Banff Trail. This jog in the southern boundary cuts out two privately owned pieces of property.

Parcel "C" referred to in Mr. Bredin's letter of April 8th, 1957, was to the north of the jog and was shown as within the University Reserve on the plan attached to the lease. It adjoins the southern boundary of the site on that part of the boundary which had been adjusted by the jog so as to delete the two other privately owned pieces.

However, Parcel "C" was not included in the lease option agreement. Parcel "C" contained 4 acres

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and was owned by a man named Margetts.

Clause 17 of the Agreement read that the City would take all steps to acquire title in fee simple to the lands shown as Parcel "C" and when such lands were acquired by the City they would be deemed to be a part of Parcel "A".

Clause 23 read that if the City had title to Parcel "C" at the time the University was entitled to a transfer of Parcel "A", then the City would transfer Parcel "C" to the University.

The first attempt by the City to purchase the Margetts property was made on September 26th, 1955, when a letter was written by the Land Department to Mr. Margetts offering \$6,000.00 for the property. Mr. Margetts did not reply to this letter. The Land Department wrote again on June 26th, 1956, and there was no reply. Again on October 26th, 1956, a letter was written to Mr. Margetts and a reply was received from Patterson, Patterson & MacPherson, solicitors for Mr. Margetts. The reply inquired as to the value placed on the land and the basis for arriving at the value.

Apparently some time between June 26th, 1956, and November 5th, 1956, Mr. Margetts called at Mr. Riley's office and Mr. Riley offered \$13,000.00 for the property. On November 5th, 1956, Mr. Riley confirmed this offer in a letter to Messrs. Patterson, Patterson & MacPherson and

stated the value had been established on a basis of what the land would sell for if it was divided into dwelling sites. On December 18th, 1956, Mr. Patterson informed Mr. Riley that Margetts had refused an offer of \$25,000.00 and that unless the City could better this offer, the deal was off. There is also a memo at that time that Mr. Bredin, City Solicitor, told Mr. Patterson that the property was not absolutely necessary for the University site.

Nothing further was done until February 14th, 1958, when Mr. Riley wrote to Mr. Patterson asking for permission to have the property appraised by an independent party. In further correspondence Mr. Riley stated that the City wished to commence negotiations again for the property and Mr. Patterson agreed to have an independent valuation made provided his client in no way should be bound by the report. A valuation was obtained from B. St.L. Robinson of Ivan C. Robinson & Co. Mr. Robinson placed a price of \$21,500.00 on the property as being the proper price between the City and an unwilling vendor. Mr. Robinson said that a developer of building sites for dwellings could only afford to pay about \$14,000.00 as the improvements on the site would have little or no value on a salvage basis. He valued the improvements to the Margetts property at \$7300.00. He stated that as the parcel was land - locked in the University site - the

owner had only one logical purchaser, i.e., the City of Calgary, and that therefore the City should give full value for the buildings. This valuation was forwarded to Mr. Riley on March 28th, 1958. On April 1st, 1958, Mr. Riley wrote to the Board of Commissioners advising them of the negotiations to date and asking for authority to clean up the transaction. This letter also stated that Ted Wilson of the Department of Public Works had indicated that the City should definitely acquire the Margetts property.

On April 15th, 1958, Mr. Riley received a reply from the Board of Commissioners which was signed by P. Aumonier, Administrative Assistant to the Commissioners. The letter read in part:

" The Commissioners advise that if the Provincial Department of Public Works want this piece of property, then they should be the ones to acquire it. If, however, we can assist them in the negotiations or purchase of this land, we should give them all the assistance we can, but under no circumstances will we purchase it. In other words, if they want it, let them go and buy it."

This is an amazing letter in view of the undertaking of the City to take all steps to acquire the Margetts property (Clause 17 of the Agreement) which undertaking was signed by one of the Commissioners, i.e. the Mayor.

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However, in explaining the letter, both Mr. Batchelor and Mr. Thomas said that they had no knowledge whatever of Clause 17. Both they and the Mayor said that the Mayor took no part in any meeting of the Commissioners which resulted in the letter of April 15th, 1958, being sent to Mr. Riley.

Commissioners Batchelor and Thomas said that the letter to Mr. Riley was worded in an unfortunate manner. They said they had in mind the contents of President Stewart's letter and also a conversation with Mr. Wilson of the Alberta Public Works Department in which a suggestion was made that the City might pay \$13,000.00 to Margetts and the Province would pay the balance.

Quite naturally, on receipt of this letter, Mr. Riley took no further action other than to forward a copy of Mr. Robinson's appraisal to Mr. Patterson on April 18th, 1958.

In the meantime, the Mormon Church was interested in obtaining a parcel of land for Church-Institute purposes on the University site. The Church was also interested in obtaining sites in the City for new churches. The Mormon Church organization is divided into Stakes and each Stake is administered by a Stake Presidency comprised of the Stake President, First and Second Councillors and associated with the Stake Presidency is the High Council

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of the Stake comprised of twelve members. Mayor Mackay is a member of the High Council of the Calgary Stake.

On December 13th, 1957, N. E. Tanner, President of the Calgary Stake, wrote to the President of the University inquiring as to the establishment of a Church-Institute on University property or near the proposed site. On January 16th, 1958, President Stewart replied that the policy of the University with respect to affiliated institutions on University property included two requirements, one that residence accommodation for at least seventy-five students must be provided, and secondly, the facilities would not be used by the general public, i.e., for public purposes.

President Tanner stated that it was contrary to the policy of the Church to establish residences on university campuses, other than in connection with Universities sponsored by the Church.

President Tanner stated he informally discussed the question of "future building sites" with all members of the High Council at the beginning of the year 1958 and it was agreed that building sites be obtained in the University and Haysboro Districts. He requested members of the Church engaged in the real estate business to locate sites in these districts. These members included Charles Ursenbach and Chester Asplund who operated Sunberta Development Ltd.

Messrs. Asplund and Ursenbach stated that late

in March or early in April, 1958, they were advised by a salesman named Vance, that the Margetts property was for sale. As a result, on April 10th, 1958, President Tanner took a 30-day option on the property for \$25,000.00, \$15,000.00 to be paid on execution of the agreement and \$10,000.00 on August 10th, 1958. Mr. Tanner then wrote to the Church Building Committee at Salt Lake City for approval of the purchase. The agreement for sale with Mr. Tanner was signed by Mr. Margetts on May 8th, 1958. The Church authorities at Salt Lake City approved the purchase and Mr. Tanner assigned the Agreement of Sale to the Church on the 29th day of May, 1958. The Church completed the payment to Margetts, and Margetts transferred the property to the Church on the 30th day of June, 1958.

The minutes of meetings of the High Council of the Church held on April 21st and April 26th, 1958, at which meetings discussions of the purchase of the property took place, show that Mayor Mackay was not present at either meeting.

President Tanner stated in his Statutory Declaration that he had no knowledge until after the option had been exercised that either the City of Calgary or the University had any interest in acquiring the Margetts property. He further stated that he had no communication, either direct or indirect, with Mayor Mackay, touching or

concerning the Margetts property until after the option had been exercised.

Mayor Mackay stated that:

- (1) he was not aware that his fellow commissioners had written to Mr. Riley instructing him that the City would not buy the Margetts property;
- (2) he was not aware that the Mormon Church had purchased the Margetts property until after the purchase was made;
- (3) he was not aware that the Mormon Church was interested in purchasing the Margetts property.

Both Commissioners Batchelor and Thomas state that the Mayor was not a party to any discussions which took place concerning the purchase of the Margetts property.

On February 6th, 1959, Commissioner Batchelor wrote to Dr. Walter Johns (now President of the University) requesting that Clause 17 be deleted from the agreement between the City and the University. Commissioner Batchelor referred to the letter of Dr. Stewart, dated 24th November, 1956, in which Dr. Stewart suggested that the boundaries might be redrawn so as to exclude privately owned parcels in the southeast portion of the site.

On February 14th, 1959, Dr. Johns wrote to Mr. Batchelor and said in part:

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" I have sent you a telegram as follows (today's date):

'I feel sure University Board prepared to waive all claims to Parcel "C" on Calgary Campus officially known as Lot 4, Block B, Plan 2179-N now owned by L.D.S. Church. Letter follows.

(signed)

"W. H. Johns,"
President U. of A. '

This letter will serve as confirmation and elaboration of the telegram.

As President Stewart wrote to Mr. E. M. Bredin, City Solicitor, of Calgary, on November 24th, 1956, it was the Board's general feeling that if difficulty were experienced in securing title to the smaller parcels in the south-east portion of the site, the boundaries might be redrawn so as to exclude these parcels, rather than obliging to the City to pay an exorbitant price or to delay completion of the agreement.

Subsequent discussion of this matter in the Board of Governors has indicated to me that they would not be adverse to the L.D.S. Church retaining possession of the site they have purchased in good faith. We feel that they are good neighbours and that they will use the site they have acquired on the Calgary campus to good effect."

President Johns went on to state in his letter that the Board of Governors would be asked to amend the agreement by deleting Clause 17 and to make such other change as to delete all mention in the agreement of the Margetts property.

CONCLUSION

At the conclusion of the evidence taken on this portion of the Inquiry, I indicated that I would hold, and I now hold as follows:

The Church of Jesus Christ of Latter Day Saints commonly known as the "Mormon Church", did not derive any improper advantage in acquiring Parcel "C" (the Margetts property) on the University Campus through the position of Mayor D. H. Mackay as Mayor of the City of Calgary.

As I pointed out at the conclusion of the evidence on this portion of the Inquiry, I feel that a good purpose was served in making this Inquiry into the circumstances under which the Church acquired the Margetts property.

At the present time, the University has two regulations with reference to religious colleges on the University campus, one requiring a residence for at least seventy-five students, and the other prohibiting public use of the facilities. Other religious bodies wishing to establish colleges on the Calgary University campus

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will have to comply with these regulations. The Mormon Church will not have to comply with them. If it builds a combined Church-Institute, it will be the only religious organization that will be able to do so on property which will appear to the general public to be part of the University campus.

It is therefore to the benefit of everyone, the University, the Church and the City that the Mayor has been able to prove that he had no part at all in giving the Church, the High Council, of which he is a member, this preferred position.

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CALGARY NORTH HILL SHOPPING LTD.

In the ordinary course of events, a person or firm interested in purchasing city owned land applies to the Land Department of which Mr. Riley is Superintendent.

However, there have been cases in which large corporations have by-passed the Land Department and have conducted negotiations with the Mayor or the other commissioners.

The latter is the course which was adopted by Simpsons-Sears Limited and by the New York Group in acquiring property on 16th Avenue North West which came to be known as the Hounsfield Heights site.

(a) NEGOTIATIONS WITH SIMPSONS-SEARS LIMITED.

On the 30th day of September, 1953, Morgan Reid, Assistant Vice-President of Simpsons-Sears Limited, confirmed by letter the arrangement he had made with E.A. Rason, Realtor of Calgary. Under this arrangement Mr. Rason was employed to act as the Company's agent in Calgary to submit information, locations, prices and recommendations on suitable properties for a retail store. In the event of the purchase of a site, Mr. Rason was to be paid a commission by the Company.

Mr. Reid stated that the Mewata Park location was excellent and every avenue should be explored with a view to obtaining a section of it for the Company.

On December 16th, 1953, Mr. Rason reported that he had talked with Mayor Mackay. The Mayor indicated that he was not in favour of selling the Mewata site to private interests. He felt that if the city should obtain control of the Mewata site, it should be reserved as a site for a City Hall and Auditorium. In his letter, Mr. Rason mentioned six other possible sites and suggested that Company officials come to Calgary as soon as possible for the purpose of examining these sites. He stated that the Mayor and Commissioner Strong had assured him that they would bend over backwards to make conditions favourable for the entry of the Company into the city.

Mayor Mackay was in Eastern Canada in June 1954 and interviewed Mr. Reid. Apparently Mr. Reid informed him that the Company was ready to come to Calgary. Mr. Reid in a letter to Mr. Rason stated that the Company was anxious to avoid publicity. However, on his return to the City, the Mayor made some announcement about the entry into Calgary of Simpsons-Sears.

In a letter dated June 28th, 1954, Mr. Rason mentioned that the area on 16th Avenue N.W. was open and he also said that he would forward particulars of a location south of the city limits.

On July 29th, 1954, Mr. Rason reported to Mr. Reid that he had made considerable progress with reference

to the 16th Avenue N .W. site as a result of discussions with City Engineer Thomas, and Co-ordinator for Industrial Division, E.H. Parsons.

On August 13th, 1954, Mr. Rason sent a long report to Mr. Reid, on the 16th Avenue N.W. site. He stated that he had met with the Technical Planning Commission and that he again had asked that the negotiations be treated in a strict confidential manner and had been assured by Commissioner Strong that the Commission would respect that confidence - He had been advised that there would be about 18 acres available and that he had told the Commission that he thought the Company would purchase it all so as to control the whole development.

In the penultimate paragraph of his report Mr. Rason stated that he was just a little alarmed over the attitude of Mayor Mackay. He was not too sure that the Mayor was 100% with Simpsons-Sears and that it might be possible that there was one other firm that could be interested in the land.

On September 17th, 1954, Mr. Rason met with the Mayor and Commissioners Strong and Batchelor. It was agreed that a meeting of the Land Committee would be held to try and get a price established. Discussion took place as to roads, clover-leafs, etc. Mr. Rason stated that mention of "The New York Group" was made at this meeting and its interest in the west part of the site. He also stated that

the Canadian Bank of Commerce and Town & Country Food Centre Ltd., were interested in establishing on the site.

Mr. Rason in his letter stated once a meeting of the City Council was held this would give Mayor Mackay something firm to offer whatever institution was coming in, and would also settle Simpsons-Sears occupancy on the eastern portion bounded by 14th St. to 16th St. N.W. and 13th Avenue to 16th Avenue N.W.

A meeting of the Land Committee of the Council was held on September 21st, 1954, attended by the Mayor, Aldermen Brecken, Lyle and Morrison, Commissioners Strong and Batchelor.

The Committee recommended to Council that the area between 14th and 16th St. N.W. south of 16th Avenue be rezoned from residential to commercial and that it be offered to Simpsons-Sears Ltd., at a price of \$6000.00 per acre plus participation in a share of the cost of the clover leaf pattern. Part of the land was Parks reservation and it was agreed that this should be taken out of parks reservation and included in the parcel offered for sale.

A meeting of the City Council was held on September 23rd, 1954, at which the recommendations of the Land Committee were approved.

On September 24th, 1954, the City Solicitor, Mr. Bredin wrote to Mr. Rason formally setting out the terms of the offer.

On October 5th, 1954, the solicitors for Simpsons-Sears Ltd., wrote to the City Solicitor confirming the terms set out in the letter of the City Solicitor to Mr. Rason.

In the meantime Mr. Rason had written to Mr. Reid with the reference to other Companies, being interested in obtaining part of the site. On October 15th, 1954, in a letter to Mr. Reid, Mr. Rason again expressed doubts as to the attitude of the Mayor, saying that he was not so sure, but that the Mayor would be very happy if Simpsons-Sears abandoned coming into Calgary entirely in which event he could then throw the east location over to M.R. Young & Company of New York which he understood were the developers of the Woodward Project in Edmonton.

The informal agreements between the City and the Company referred to the site as containing between 15 and 20 acres.

However, in the formal agreement for sale dated June 28th, 1955, the area was described as containing 13.5 acres. The plan showed that a considerable area of the site had been taken for roadways etc. The price was set at \$6,000.00 per acre and the Company also agreed to pay a total of \$45,000.00 as its share of the cost of streets, cloverleafs and the relocation of a playground. The Company agreed to build a store at a cost of at least \$2,000,000.00. In the event the Company failed to build or wished to sell any part of the site, then the City had the right to

re-purchase the land at the cost to the Company.

(b) NEGOTIATIONS WITH THE NEW YORK GROUP AND CLIFFORD
R. WALKER.

In the meantime, sometime prior to June, 1954, officials of Blair, Rollins and Company introduced Charles Shipman of Co-ordinated Financial Services Inc., to Clifford R. Walker of Calgary. Both companies were located in New York City and were engaged in promoting and arranging for the financing of commercial ventures.

At that time they were engaged in promoting a shopping centre in the north west part of Edmonton which had Woodward's as its main store.

Mr. Walker had moved to Calgary in 1951 and had played an important part in the development of the oil resources of the Province. He and his family had been close friends of Mayor Mackay and his family for many years.

Mayor Mackay and Mr. Walker were in New York from June 17th to June 23rd, 1954.

On June 24th, 1954, Blair Rollins and Co-ordinated Financial Services signed an agreement wherein they agreed to co-operate with each other in exploring the feasibility and desirability of developing one or more sites in the City of Calgary for one or more shopping centres, and to proceed with such development as might be found feasible and desirable.

The term "development" included obtaining options and purchasing sites, city-owned or otherwise, raising capital to be used for the purpose of the joint venture and to carry out actual construction to the extent determined upon.

As a result of a telephone call from Mr. Maguire of Blair Rollins to Mr. Walker in Calgary, it was agreed that a further agreement would be entered into, whereby Mr. Walker would obtain a one-third interest in such equity and/or securities as would be allotted to the group on account of pre-organization services. It was further agreed that Mr. Walker would, out of his one-third interest take care of such people on his end of the deal (as would have to be taken care of). Mr. Walker said that this latter undertaking referred to some preliminary surveys made by his brother-in-law but that he had not paid his brother-in-law anything.

This memorandum of Tripartite Understanding was signed by the two companies and forwarded to Mr. Walker for his signature on June 30th, 1954.

Apparently the New York Companies had been fully briefed at this time about the negotiations being carried on with Simpsons-Sears Ltd. It is also apparent that the New York Companies were promoting their project of a shopping centre with the idea that it would be built on property adjoining the proposed Simpsons-Sears store.

Mr. Shipman came to Calgary and discussions took place among Mr. Shipman, Mr. Walker, the Mayor and the City Planner.

At the same time the City was negotiating with the Provincial Government with reference to a site for the Provincial Auditorium. Two sites had been mentioned, Mewata and 12 acres west of the Technical School. A newspaper item suggested that the Government and the City had agreed that the Mewata site was the most logical location for the Auditorium. Mr. Shipman of Co-ordinated Financial Services became disturbed over this development. He was fearful that as a result, Simpsons-Sears would be able to buy the 12 acres on the Tech. site.

In a letter to Mr. Walker dated July 19th, 1954, Mr. Shipman stated that it was very much to their interests that the 12 acres be not released for commercial purposes; if Sears bought there, it would be impossible to get them for Capitol Hill and the chances for a successful shopping centre at the Capitol Hill site would be seriously damaged. He asked Mr. Walker to try to convince the Mayor that the Auditorium on the "Tech" site would also be good for the city, better indeed than the Mewata Site.

The next day Mr. Shipman wrote to the Mayor on a first name basis. He repeated an invitation to the Mayor and Mrs. Mackay to attend the World Series which he had

made verbally a few days previously.

The letter clearly set out that the New York Companies would establish a shopping centre in Calgary provided Simpsons-Sears bought part of an available location and the New York Companies could buy the balance. At that time the site being discussed was the Capitol Hill Site and this was a triangle site of 33 acres. Mr. Shipman wanted this to be expanded into a rectangle as 33 acres would not be enough for a shopping centre having two department stores. Mr. Shipman had discussed the possibility of another department store with Woodward's in Vancouver and they had shown some interest. Woodward's were to be contacted again in two or three months and advised of the plans of Simpsons-Sears.

There is no record of anyone advising Simpsons-Sears of these negotiations or what they thought of them. Of course, such advice could not have been very well given in view of the various undertakings to Simpsons-Sears that their negotiations would be kept in confidence.

Mr. Frank Bateman of Blair Rollins Inc., came to Calgary on August 1st, 1954. He examined several sites for the proposed shopping centre, first with Mr. Walker and later with Mr. Robison, Realtor. He discussed various sites with the Mayor and the City Planner. The Mayor advised him of the plans of Simpsons-Sears. Mr. Bateman appeared not too concerned about the shopping centre being adjacent to Simpsons-Sears. He felt that if it was located within

5-10 blocks of Simpsons-Sears, it would be all right.

The Mayor promised to telephone Mr. Bateman as soon as a decision on one site was reached if Mr. Walker was not in the city. These facts about Mr. Bateman's visit to Calgary are contained in a memorandum which he prepared on August 16th when he returned to New York.

On August 24th, 1954, the Mayor wrote to Mr. Bateman again on a first name basis. He stated that the Government had decided to place the Auditorium on the Tech. site; that Simpsons-Sears wanted to obtain the property immediately west of 14th Street and south of 16th Avenue (the property which they did purchase). The Mayor went on to discuss the possibility of the New York interests acquiring other property on 16th Avenue at 24th Street and if they decided on this latter site then they should buy the key property which was two privately owned parcels so that they would have a rather important wedge in the entire matter. The Mayor ended his letter by stating that he was going to Pittsburgh on September 27th and that Mr. Walker had it in mind that he and the Mayor should go on to New York at that time.

Then on September 21st, 1954, as previously mentioned, the Land Committee agreed to sell the 14th Street and 16th Avenue property to Simpsons-Sears. In their report to Council, the Committee said in the final paragraph:

"It was reported by His Worship the Mayor that another Promoter is interested in acquiring the 15 acre

parcel lying south of 16th Avenue and West of 16th Street, and His Worship was authorized by the Committee to explore this additional proposal on a similar basis".

The Mayor went to New York and met the New York Group which included M.R. Young, President of New York Central Railway. Discussions took place with reference to the proposed shopping centre. The Mayor and Mr. Shipman returned to Calgary and further discussions took place between the Mayor and Mr. Shipman on October 12th.

As a result the Mayor wrote a formal letter as Mayor of the City to Mr. Shipman and handed the letter to him. The Mayor stated that he had been authorized by Council to determine what could be done to complete negotiations with the New York Group for the purchase by them of the second part of the area adjoining that taken up by Simpsons-Sears. He stated that he presumed that the terms of an agreement would be similar to the terms offered to Simpsons-Sears.

Mr. Shipman left immediately for Vancouver and endeavoured to interest Woodward's into coming into the Shopping Centre. Woodward's refused to come into the proposed Shopping Centre. On October 15th Mr. Shipman wrote to the Mayor advising him of this fact but stated that the New York Group were still prepared to develop the project under

the terms suggested in the Mayor's letter of October 12th.

On October 20th the Mayor wrote to Mr. Walker stating that his extra expenses in going to New York were \$138.46 and that as suggested by Mr. Walker, he presumed they should be a charge to Mr. Shipman and his interests. The Mayor went on to say that he had been approached by other interests prepared to follow out a plan similar to that proposed by the New York interests. He concluded his letter in the following manner:

"I believe we should have Mr. Shipman waste no time in getting some sort of a consolidated picture before us so that we may have something to act upon. It would appear to me that other interests are dedicated to the idea of interesting the same basic organizations in this other strip of land. Someone who shows the initiative will, so to speak, 'get there first'. I trust Mr. Shipman does not consider this a matter that can be channelled into the future some time, because the very idea that Simpsons-Sears are prepared to go into this area has awakened no small amount of interest locally in the other area."

Mr. Walker met with the Mayor immediately and a discussion took place as to the information which should be supplied by the New York Group to the City. This information included a list of businesses, in the shopping centre, including a liquor store, bank (preferably Royal

or Montreal), National System of Baking, Food Store, Woolworth's or Kresge's, Flower Shop, Chain Drug Store; parking should be on a four to one basis; that a local architect should be employed.

This information was conveyed by Mr. Walker to Mr. Shipman in a letter dated October 25th.

Mr. Shipman wrote to the Mayor on October 29th, stating that the New York Group were prepared to go ahead with an expenditure of some \$3,000,000.00 to \$3,500,000.00; that local architects would be used; that parking on a four to one basis would be established and he listed the businesses set out in Mr. Walker's letter and added several others.

The Mayor replied to this letter on November 18th, stating that the Board of Commissioners were prepared to recommend to Council that the New York Group be given first consideration in relation to the area and that in informal discussions with some Council members, he found that they were of a similar frame of mind. The Mayor suggested that as soon as Simpsons-Sears submitted a plan, then the New York Group should do likewise.

In the meantime, Mr. Ivan C. Robison, Realtor, on instructions from Mr. Walker, had taken options on two large properties on 17th Avenue S.W., west of Glendale subdivision. Mr. Robison reported this action in a letter to Mr. Shipman dated November 18th.

As a result of a telephone conversation between

Mr. Shipman and the Mayor, Mr. Shipman by letter dated November 23rd, 1954, forwarded a deposit of \$5,000.00 on the Hounsfield Heights site.

A meeting of the Land Committee of the Council was held on January 4th, 1955. Those in attendance were the Mayor, Aldermen Brecken, Lyle and McIntosh and Commissioner Strong. The report of the Committee set out that the Mayor reported that Co-ordinated Financial Services was a reputable concern which had recently completed a large shopping centre in Edmonton and that it was their intention to build stores to the value of two to three million dollars.

The Land Committee recommended that the site be offered at the same price and on the same terms as the price and terms of the adjoining site to Simpsons-Sears.

This recommendation was approved by Council on January 17th, 1955.

Mr. Shipman was in Calgary at the same time, or immediately after the Land Committee Meeting. On January 12th, the Mayor wired Morgan Reid of Simpsons-Sears introducing Mr. Shipman to Mr. Reid so that Mr. Shipman could meet with Mr. Reid for the purpose of discussing mutual development problems.

Mr. Shipman returned to New York and on March 17th, the Mayor wired him with reference to a meeting in New York with Mr. Reid and Mr. Shipman on March 23rd. The Mayor advised Mr. Shipman that caveats had been filed and were

Calgary North Hill Shopping Ltd.

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being held in law courts until he returned with possible solution which would result in withdrawal of all objections.

The Mayor went to New York and on March 31st Mr. Shipman forwarded a cheque to Mr. Walker for \$630.50 to cover the travelling expenses of the Mayor.

(c) DISAGREEMENT BETWEEN BLAIR COMPANY AND CO-ORDINATED FINANCIAL SERVICES LTD.

In the meantime, dissension had arisen between the Blair Company and Co-ordinated Financial Services Ltd. Apparently without Mr. Walker being informed, the two Companies had entered into a further agreement on July 29th 1954 with reference to services to be performed by the two Companies after the Calgary venture had been organized. Co-ordinated became very dissatisfied with the part played by Blair in the Edmonton venture.

In a letter to Mr. Walker dated November 26th, 1954, Mr. Shipman said in part:

"I do not think it inexact to say that, with you performing great and indispensable services on the Calgary scene, and with Blair & Co., playing a purely passive role, the policy-making and organizing responsibilities of our project have been centred in Co-ordinated".

and later in the said letter:

"In plain fact, the single constructive thing they have done to date has been to introduce me to you."

Mr. Shipman also pointed out that each of the three parties had agreed to put up \$50,000.00 each and that Co-ordinated had obtained commitments for another \$500,000.00. He further stated that inasmuch as it had been found necessary to give at least 80% of the equity to those who put up the money, it left only 18% for the original promoters, Co-ordinated, Blair and Walker.

Dealing with the Edmonton project, Mr. Shipman said that as soon as the Edmonton Syndicate was well under way, it became evident that there would never be a shopping centre, or even sufficient preliminary development to permit them to sell out with a worth-while capital gain, unless a terrific amount of hard, effective day-by-day work were put into it. With further reference to the Edmonton project it was decided to employ an organization to develop the property to the point where they could sell out on a satisfactory basis.

As a result of the disagreement between Blair and Co-ordinated, Co-ordinated bought out Blair's interest in the venture towards the end of December, 1954. Co-ordinated paid the sum of \$10,985.01 cash to Blair and agreed that it would pay to Blair Rollins one half of any net profits it might receive on its equity interest in the joint venture apart from any equity interest which it might purchase as a concomitant of senior investment capital by it but such

payment would not exceed a further payment of \$10,000.00.

Mr. Walker was advised of this settlement in a letter from Mr. Shipman dated December 23rd, 1954. Mr. Shipman stated that Mr. Walker remained in the venture with an equity participation equal to one-half of Co-ordinated (exclusive of any equity interest which Co-ordinated might obtain as a concomitant of direct cash investment by it in combined senior capital and equity). Mr. Walker was to have the opportunity of investing in senior capital and equity on the same basis as any other participant but would not be under an obligation to so invest.

(d) INCORPORATION OF CALGARY NORTH HILL SHOPPING LTD.

To carry out the Calgary project, an Alberta Company known as Calgary North Hill Shopping Ltd., was incorporated.

On January 27th, 1955, 8418 shares at a paid up value of 20 cents U.S. a share were allotted. This meant that \$1,683.60 of capital was paid into the Company by 17 shareholders. In addition 11 of the 17 shareholders loaned a total of \$100,500.00 to the Company on the basis of \$350.00 for each share.

On July 29th, 1955 an additional 6,502 shares at 20 cents U.S. were issued and 12 out of 18 shareholders loaned \$91,113.67 to the Company on the same basis as on the first allotment.

The result was that by the end of 1955, 15,020 shares, having a value of \$3,004.00 and loans by the shareholders amounting to \$195,633.67 had been paid to the Company.

In the month of June, 1955 a formal agreement was signed between the City and Calgary North Hill Shopping Ltd. This agreement was similar in terms to that signed by Simpsons-Sears Ltd. The Company agreed to spend at least \$2,000,000.00 on improvements, to commence construction within one year from November 30th, 1955, to spend at least \$1,000,000.00 by October 1st, 1957. In default the Company agreed to resell the land to the City at the purchase price plus cost of grading and levelling. Clause 16 of the Agreement provided that if the Company wished to sell any of the land, the City would have the first opportunity to buy at a price of \$6,000.00 plus a proportionate share of other costs incurred by the Company.

(e) SALE OF SHARES BY NEW YORK GROUP

On January 31st, 1956, forms were sent out by Mr. Shipman to all shareholders. The shareholders were informed that the Group were selling their shares to Loblaw Groceries Ltd.

This transaction was completed on February 28th, 1956. Loblaws purchased the shares of Calgary North Hill Shopping Ltd., and the notes covering the loans made to the Company by the Shareholders.

Loblaws paid a total of \$562,500.00. Of this amount \$85,110.75 was paid to Co-ordinated Financial Services Inc. under some agreement made on January 28th, 1955. The notes of \$195,633.67 were paid. This left a balance of \$476,618.17 as payment for shares which had cost the shareholders \$3,004.00.

The profit to those shareholders who had loaned money to the Company was about 50%. But the profit to those shareholders who had not loaned the Company was astronomical. The profit to those shareholders was as follows:

James L. Wolcott paid \$40.20 for 201 shares and received \$3,593.04.

Robert R. Young paid \$806.40 for 4032 shares and received \$72,075.24.

Charles Shipman paid \$120.20 for 601 shares and received \$10,743.36.

Clifford R. Walker paid \$180.20 for 901 shares and received \$16,106.10.

William C. MacMillan paid \$362.40 for 1812 shares and received \$32,390.95.

The Lansing Foundation paid \$240.40 for 1202 shares and received \$21,486.71.

(f) SUBSEQUENT DEVELOPMENTS

Loblaws then transferred all shares in the Company

to Principal Investments Ltd., a company operated by the Bennett Family of Toronto. The Bennetts announced in the summer of 1956 that the shopping centre would be built. A meeting was held in the Palliser Hotel attended by some members of the Council at which the plans of the Company were announced by A.J. Bennett. On August 3rd, 1956, Mr. Bennett wrote to the Mayor advising him that Principal Investments Limited had taken over the shares of North Hill Shopping Limited and that there was no question in their minds that the agreement was a binding one.

However, the Bennetts did not proceed with the project. On May 14th, 1957, the shares were re-transferred to Loblaw Groceries Co. Ltd., and Loblaws proceeded to have the shopping centre built.

Mr. Walker did not invest in the project apart from the amount of \$180.20 paid for shares. He did not receive any part of the \$85,110.75, paid to Co-ordinated Financial Services although this Company paid out more than \$20,000.00 to Blair Rollins in accordance with the settlement made with that Company.

(g) GIFTS AND LOANS FROM CLIFFORD R. WALKER TO MAYOR
D. H. MACKAY

In 1952, Mr. Walker sold Merrill Petroleum shares to Mayor Mackay at a price less than the price at which the shares were offered to the public. This enabled the

Mayor to take an immediate profit of \$5,500.00.

On April 28th, 1952, Mr. Walker gave 500 shares of Sage Oil Company to Mayor Mackay.

In January, 1954, Mr. Walker paid the expenses of the Mayor and his wife on a trip to Mexico.

At Christmastime 1954, Mr. Walker promised the Mayor a trip to Hawaii. This trip was taken by the Mayor and his wife in 1958.

In the month of June 1955 Mr. Walker loaned the Mayor \$2,000.00 which the Mayor used as a down payment on his Banff home. In a letter dated August 10th, 1955 to Mr. Walker, the Mayor stated that if he was forced to leave off with building the house, then in some acceptable manner, the project could become Mr. Walker's.

On March 2nd, 1956, Mr. Walker loaned the Mayor \$2,000.00. The Mayor stated that he used this money to purchase 300 shares of Westcoast Transmission at \$5.00 a share and 10 units of subordinate debentures at \$115.00 per unit which were made available to him by Mr. George L. McMahon on May 14th, 1956. These shares have fluctuated between \$28.00 and \$18.00 since that time and the Mayor stated that he still held these shares.

Mr. Walker wrote off both these loans of \$2,000.00. However, the Mayor repaid the last loan of \$2,000.00 in 1959 during the course of the Inquiry.

- (h) DID MAYOR MACKAY ACTIVELY ASSIST MR. WALKER AND HIS NEW YORK GROUP TO ACQUIRE LANDS FROM THE CITY TO THE EXCLUSION OF OTHER PARTIES IN RETURN FOR FAVOURS RECEIVED FROM MR. WALKER?

There is no doubt in my mind that:

1. The Mayor and Mr. Walker agreed that Mr. Walker and his friends in New York would develop the west half of the Hounsfield Heights site.
2. That the Mayor failed to make full disclosure to his fellow Commissioners e.g. At no time did he inform his fellow Commissioners that Walker was the Calgary representative of the New York Group.

At no time did he introduce Shipman to Commissioner Batchelor.

Certain letters were written on a personal basis. Other letters were written on a formal basis.

The Mayor's course of action was such as to raise suspicions in the mind of Mr. Rason.

The Mayor kept the New York Group fully informed about the moves made by Simpsons-Sears. He did not appear to think it fair that Simpsons-Sears should be advised that the New York Group were trying to establish another large Department Store (Woodward's) next door to them.

3. The Mayor accepted payment of part of his travelling expenses to New York on one occasion and all of his expenses on a similar trip on another occasion. I believe

that it was highly improper for the Mayor to accept these payments without at least disclosing them to Council and obtaining Council's authorization to accept payment. I do not believe Council would have given such authorizations as I believe Council would have felt that it would have been improper for its agent, in this case the Mayor, to accept payment of expenses from a Company which was endeavouring to purchase city-owned land.

4. I am certain that the Mayor knew shortly after February 1956 that Walker and his group had sold out. I am sure that in his zeal to obtain a shopping centre, the Mayor would not refrain from making some inquiry from Walker as to the reason for inaction from February to July 1956.
5. There is doubt in my mind as to whether or not the Mayor knew that Walker and his group had made a substantial profit and I make no finding in this regard. There is the fact that the Mayor made no effort to find out although requested to do so by Alderman McIntosh. A motion for this information was defeated in Council on April 1st 1957 by a 6-4 margin with the Mayor voting against the motion.
6. The Mayor and Mr. Walker created an unfavourable impression in some of the evidence which they gave. For

example, it took five pages of evidence to obtain an admission from the Mayor that he knew that Walker was a representative of the New York Group.

I do not know why the Mayor and Mr. Walker gave their evidence in this fashion.

I have no doubt that in the Spring of 1954 the Mayor and Mr. Walker agreed that in view of the possibility of the Simpsons-Sears development, there was also the possibility of an adjacent development similar to the shopping centre in Edmonton. There is no doubt they decided to interest the developers of the Edmonton centre in the Calgary development. Mr. Walker and the Mayor went to New York in June, 1954. They were there for a week. A deal was made between the two New York Companies and Mr. Walker. The agreement was put in writing.

Mr. Walker and the Mayor co-operated to the fullest degree in obtaining the west half of the Hounsfield Heights Site for the New York Group. There was continuous activity of letters, phone calls, trips to New York, etc.

On January 27th, 1955, the New York Group raised \$102,182.60. The New York Group was still endeavouring to go ahead with the development in July 1955 because at that time an amount in excess of \$92,000.00 was paid into the Company by the shareholders. Their local

solicitor made an investment in the Company in the summer of 1955 on the understanding that it was going to be a long term investment.

Up to this point, I can see nothing seriously wrong in the actions of either Mr. Walker or the Mayor. Mr. Walker was actively promoting this project and was entitled to a profit if he could make one for the efforts he was expending. In his zeal the Mayor may have favoured the New York Group but this is understandable in view of the results obtained in the Edmonton project and his desire to see the same results in Calgary.

No doubt the New York Group explored the possibilities of development between July 1955 and the end of the year. Then they decided to sell out. The City Solicitor, Mr. Bredin, said that every effort was made to protect the City against the possibility of resale by the New York promoters. Several conversations were held with the Commissioners in this regard and the whole tenor of Council was to see that the New York interests did not parcel the land out because it would have been very valuable if sold as individual sites.

The evidence given made it abundantly clear that once Simpsons-Sears bought the east half of the site, the west half had a much greater value than \$6,000.00 an acre but the Commissioners and Council agreed to

sell this land to the New York Group because of the long range advantages which would accrue to the City. Commissioner Batchelor set out these advantages very clearly.

The New York Group including Mr. Walker, entered into an agreement with the City that they would not sell the land without first offering it to the city at cost. They were fully aware of the City's endeavour to prevent speculation in the City-owned lands and of the policy of the City requiring definite building commitments. True, they did not sell the land, they sold their shares in the Company and thereby circumvented the policy of the City. A company with a large number of shareholders could not have done that; it was only because there were a small number of shareholders, in this case less than 20, that made it possible to get around the well-known policy of the City.

The unearned increment in the value of this land which arose because of the growth of the City in the area in which it was situated and which also arose because of the purchase of the east half of the site by Simpsons-Sears, belonged to the citizens of Calgary. The Council, in its wisdom, decided to forego that unearned increment in return for a promise of two to three million dollars of development by the New York Group. This development would create employment and

pay the City handsomely in taxes. Instead the New York Group took this unearned increment for themselves without developing the property.

7. The only conclusion I can come to is that the Mayor had actively supported the policy of Council against speculation in City lands; he had formed a high opinion of the New York Group; they had let him down; he did not wish to admit that these men introduced by his close friend, Mr. Walker, had let him down. The shopping centre was built and all the benefits which were planned to accrue to the City did accrue to the City.
8. Although the gifts and loans made by Mr. Walker to the Mayor were of a substantial nature, I find that the Mayor did not assist Mr. Walker and his New York Group to acquire the shopping centre site from the City in return for these gifts and loans.

Mr. Walker and the Mayor have been close friends for many years. Mr. Walker had made gifts to the Mayor prior to the time at which negotiations with the New York Group were carried on.

Up to the time of the sale by the New York Group to Loblaws I believe both the Mayor and Mr. Walker were working earnestly in an endeavour to bring a large shopping centre to Calgary; Mr. Walker with mixed feelings of civic pride and a desire to make a profit;

the Mayor with a desire to bring another big development to Calgary.

If after the sale by the New York Group to Loblaws, the Mayor had obtained the facts of the sale from his friend, Mr. Walker and had disclosed them to Council, the suspicions caused by this friendship and by the rumours of a large profit having been made by Walker and his group would not have arisen.

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ERIC'S LATE MODEL CARS AND MAYOR MACKAY

Eric Reid and R. R. Dillabough operated a used car lot in Calgary in 1955 known as Eric's Late Model Cars. Mr. Reid was a personal friend of the Mayor and had gone to school with him.

As a result of a conversation Mr. Reid agreed to sell a new 1955 Cadillac car to the Mayor. In payment the Mayor traded in the 1954 Buick which he had obtained from Stampede Motors and paid a difference of \$100.00.

Eric's Late Model Cars purchased the Cadillac from Motorville Car Sales of Niagara Falls. On April 15, 1955, they issued their cheque for \$4900.00 in payment of the car. The cheque was marked "balance in full 1955 Cadillac". Mr. Reid stated that \$4900.00 was the total price paid for the Cadillac. Mayor Mackay took delivery of the Cadillac in Eastern Canada. The Buick was sold to Gordon Elves Ltd. on May 18th, 1955 for \$5200.00 which included a trade-in of a 1951 Oldsmobile at \$2000.00.

Both Mr. Reid and Mr. Dillabough stated that they had not received any further payment in any way whatever for the Cadillac. Both of them stated that neither had ever had any business dealings with the City.

Construction of Banff house.

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MAYOR MACKAY AND KEITH CONSTRUCTION (CALGARY) LTD.

RE: BANFF HOUSE

In January, 1955, Mayor Mackay asked Keith Construction (Calgary) Ltd. for estimates on a house to be built in Banff, Alberta.

Mr. E.V. Keith instructed one of his employees to prepare an estimate.

The estimate was prepared on January 14, 1955, as follows:

General Contractor

Labour	\$ 1430.03	
Materials.	3922.17	
Millwork	600.00	
Exterior Decorating. .	<u>135.45</u>	
		6087.65
Sub Trades		<u>7689.90</u>
		\$13777.55

At the bottom of the summary of estimates, a statement of preliminary costs is shown at \$551.00ⁱ including permits, surveys, gas line, legal expense (\$85.00) and mortgage insurance (\$256.00). This brings the total estimate to \$14,328.55, but included in this is a double charge of \$135.45 for exterior decorating.

There were pencil notations on the summary showing reductions in the sub-trades amounting to \$360.00 which reduced the main estimate to \$13,282.00 and the total to \$13,833.00.

Construction of Banff house

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In giving his evidence Mr. Keith stated that the original estimate for plumbing was \$1700.00 and that there was a contract signed for \$1550.00. The actual cost sheets show that \$1614.53 was paid to the plumber. Mr. Keith was also of the opinion that there was a firm bid from the heating sub-contractor at \$850.00. This was also in error as this sub-contractor was paid \$1100.00.

The estimates called for hardwood floors at a sub-trade cost of \$723.75. Hardwood floors were not put in the house. Instead, linoleum at a cost of \$385.80 was laid. The estimates contained \$135.45 for exterior painting and nothing for interior decorating. The sum of \$1100.00 was paid for decorating. Estimate of the sub-trade for roofing was \$620.00. He was paid \$484.00.

The estimate for labour to be paid by the contractor was \$1430.03. The actual amount paid was \$393.55.

On June 13, 1955, the contractor and the Mayor signed a contract in which the contractor agreed to build the house and the Mayor agreed to pay a total price of \$13,500.00 plus mortgage insurance. The mortgage insurance was later found to be \$203.00.

The Mayor borrowed \$2,000.00 from Clifford R. Walker to assist him in making the down payment of \$2350.00.

The house was built by the contractor during the months of June to October, 1955.

The Mayor obtained a loan from the Bank of Montreal

Construction of Banff house

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under the provisions of the National Housing Act in the amount of \$10,353.00. After deducting the mortgage insurance of \$203.00 and legal fees of \$74.75, the balance of the mortgage money in the amount of \$10,075.25 was paid by the Bank to the contractor.

Leaving out the calculation, the mortgage insurance which was deducted by the Bank, the contractor received the following:

Contract Price	\$13,500.00	
Down payment	\$ 2350.00	
From Bank Sept. 27, 1955 . .	7662.00	
From Bank Dec. 22, 1955 . .	2378.25	
From Bank April 19, 1956 . .	35.00	
To balance owing	<u>1074.75</u>	
	13500.00	13,500.00

The contractor sent statements to the Mayor on June 27, 1956, on September 30, 1956 and November 30, 1956, showing a balance owing of \$1,000.00.

The ledger sheets of the contractor shows that it spent \$15,317.55 in building the house. In addition it paid the legal fees of \$74.75.

Included in this amount were the following items contained in the estimates and shown as preliminaries and not included in the main estimate of \$13,777.55.

Construction of Banff house

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Business permit	\$ 25.00
Building permit	14.50
Gas line.	52.00
Survey	75.00
Mortgage insurance.	203.00
Legal fees.	<u>74.75</u>
	\$444.25

The Mayor did not pay the balance of \$1,000.00 to the contractor until the spring of 1959 and until after evidence was taken of this item on this Inquiry.

Mr. Keith said that he thought the Mayor would pay when he got the money. He said he had not pressed for payment because it would not be good public relations; that the Mayor had a lot of votes in Calgary and if suit was brought, or something like that, the Company would lose a lot of business. Keith Construction lost \$2639.72 on the contract in actual money paid out. Mr. Keith stated that this occurred because the employee who made the estimate was inefficient and that later the same employee supervised the construction of the house and was again inefficient. Mr. Keith also stated that the Company also lost money on other houses built in 1955 because of the inefficiency of this employee and that because of this inefficiency this employee was no longer employed by the Company.

Accepting the statement that the employee was inefficient, even a casual comparison of the estimates

prepared by this employee with the actual work done shows that very little attention was paid to these estimates. The house was not built according to these estimates in many respects.

The estimates called for the General Contractor to supply nearly 50% of the labour and materials. In actual construction practically the whole job was done by sub-contractors. As previously pointed out the contractor paid out only \$393.55 in labour costs. Frankly, I do not understand how this amount would even pay the wages of the inefficient supervisor from June to October. Originally, there were labour costs totalling \$806.50 in the cost sheets but in October a credit for labour of \$412.95 was put through, leaving a net labour cost of \$393.55.

Mr. Keith was asked the following questions and gave the following answers: (Page 1260)

"Q Now were you trying to get the Mayor, the house at about cost, or not, sir?

A I don't know why we would. I can't see any reason why we would.

Q Well, first, were you, sir?

A I don't know, Bill."

To me, these answers set out very clearly Mr. Keith's attitude. He was not worried if he gave the Mayor a favour in building this house at or somewhat below cost. Mr. Keith is a very large contractor. He has made a very

great success of his business. He must know what he is doing. He must give value in the homes which he builds or he would not have attained his present success. He knows his business.

Mr. Keith stated that he did not know that he had lost money on the Mayor's house until about January, 1959. He said the Company has individual cost records and that he got monthly statements. He did not go through the individual costs on each house unless something came up but it was seldom he ever went through the individual costs. One wonders what would have to come up in order for Mr. Keith to look at an individual cost. It would seem to me that when a contractor lost over \$2,000.00 in building a house this would be "something which would come up."

Mr. H. N. McKay examined the house on February 15th, 1959, and estimated the 1955 cost to be \$15,580.00. He based this estimate on a cost of \$10.00 per square foot plus \$1380.00 for extras and \$1020.00 for out-of-town charges. According to the valuation of H. N. McKay, Keith Construction gave a favour to the Mayor of at least \$2,000.00. From the evidence I have come to the conclusion that Mr. Keith knew he was giving a favour to the Mayor.

However, there is no evidence that the Mayor knew he was obtaining this favour.

With reference to the balance of \$1,000.00 the evidence shows that Keith did not care whether this account

was paid or not. I am sure that Mr. Keith does not let unpaid balances of \$1,000.00 remain unpaid on other houses built by him. If he did, he would not remain in business very long. As he said, he did not press for payment, because it was the Mayor who owed the money.

Indirectly through Kelwood Corporation Keith does a very large amount of business with the City. The Mayor was very foolish in allowing this account to remain unpaid for over three years without making some payment or arrangements for payment.

There was no evidence that Keith had obtained any preference from the City as compared to other contractors.

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GIFTS BY MR. VINEBERG OF SPRUCE CLIFF
APARTMENTS TO MAYOR D. H. MACKAY

The Mayor stated that he was enjoying a holiday at Gull Lake in, he believes, 1952, when he received a telephone call from Mr. Vineberg in Montreal. Mr. Vineberg wished to see him immediately in Calgary. Mayor Mackay met Mr. Vineberg and then negotiations commenced which eventually resulted in the building of the Spruce Cliff Apartments.

Mr. Vineberg made the following gifts to the Mayor.

1952 entree dishes

1953 Electric dish washer

Building supplies to the value of \$200.00.

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GIFTS BY KELWOOD CORPORATION TO
MAYOR D. H. MACKAY

Kelwood Corporation was incorporated in 1955. It is owned by five other corporations, each having a 20% interest. They are as follows:

Standard Holdings Ltd.

Borger & Sons Ltd.

Keith

Jager

H. D. & B. Investments Ltd.

The Company purchases land and arranges for its development. Keith and Jager build the homes, Burns & Dutton construct the sidewalks, etc., Borger does the dirt work and H. D. & B. the engineering work.

Kelwood Corporation made the following gifts to the Mayor:

1955	Chesterfield for Banff house	\$317.40
1956	Deep Freeze	295.00
1957	Furniture, 2 swivel rockers, 2 ottomans, one frame table and one lounge chair	650.00

Mr. Dutton, Mr. Jennings and Mr. Keith all stated that they had no knowledge of these gifts being made to the Mayor.

Gifts to Alderman
Gifts to Commissioner Batchelor

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GIFTS TO ALDERMEN

Counsel for the City wrote to all Aldermen presently serving in the City Council requesting them to advise him whether any of them had received gifts from persons having dealings with the City.

Replies were received from all Aldermen to the effect that no gifts of any substantial nature had been received. Most of the Aldermen had not received any gifts. One or two reported receipt of small items such as a turkey, basket of groceries, flowers, etc.

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COMMISSIONER BATCHELOR

Mr. Batchelor has been Commissioner of Finance since 1954.

He kept a list of gifts which he received at Christmastime in each of the years 1954 to 1957. He received up to a maximum of nine gifts in each of the years 1955 to 1957 and their average value was approximately \$10.00 each. He did not accept any gifts at Christmas of 1958.

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CORPORATE INTERESTS OF MERVYN A. DUTTON,
ROBERT W. BURNS AND R. F. JENNINGS.

1. Standard Holdings Limited - a holding Company, five shareholders including M. A. Dutton and R.F. Jennings, latter two holding voting control of election of directors.
2. Standard Gravel and Surfacing Company of Canada Limited - No direct interest except by reason of shares in this Company owned by Standard Holdings Limited.
3. Standard Gravel and Surfacing Company Limited - All shares owned by Dutton and Jennings.
4. Burns and Dutton Concrete and Construction Company Limited. Shares held equally by Dutton, Burns and Jennings until January 1959 at which time shares of Dutton and Jennings transferred to Standard Holdings Limited.
5. National Paving Company Limited - shares held by Dutton and Jennings. Company now inactive.
6. Stampede Motors Limited - Dutton and Jennings are directors. Their shares were transferred to Standard Holdings Limited at end of 1958.
7. Chinook Shopping Centre Limited - Dutton is president.
8. Peerless Rock Products Limited - a sand and gravel Company controlled by the Dutton interests.
9. Kelwood Corporation Limited - 20% interest held by Standard Holdings Limited.

Corporate Interests of Mervyn A. Dutton, Robert W. Burns
and R. F. Jennings.

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In addition Mr. Dutton is either president or a
director of numerous other Companies having to do with
Drive-In Theatres, Pipe Lines, ranches and other endeavours.

Kelwood Corporation is a development Company in
which each of the following hold a 20% interest.

- (a) Standard Holdings Limited
- (b) E. B. Keith
- (c) Wm. Jager
- (d) Henry Borger and Sons Limited
- (e) H. D. & B. Investments Limited (Haddin, Davis & Brown).

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Gifts by Burns & Dutton and Standard Gravel to other Civic
Officials

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GIFTS BY BURNS & DUTTON, AND
STANDARD GRAVEL TO OTHER CIVIC OFFICIALS

Former Commissioner I. Strong

	<u>Description</u>	<u>Value</u>	
1955	Gift certificate	\$ 50.00	Burns & Dutton
	Candelabra	125.00	Joint gift
1956	Gift certificate	50.00	Burns & Dutton

Mr. Strong resigned as Commissioner in 1957.

Commissioner E. C. Thomas

Mr. Thomas was City Engineer from September 1952 until February 1957 when he succeeded Mr. Strong as Commissioner of Public Works.

1955	Gift Certificate	50.00	Burns & Dutton
	Coffee Wagon	135.00	Joint gift
1956	Television set	253.54	Joint gift
1957	Chair	159.00	Joint gift
	Shot Gun		Burns & Dutton
1958	Thermos Set	30.00	Burns & Dutton
	T.V. Table	37.00	Burns & Dutton
	Silver Tray	98.00	Standard Gravel

Mr. Walshaw - Engineer in charge of street construction including sidewalks.

1955	China set	117.00	Joint gift
1956	Luggage	90.00	Standard Gravel
1957	Travelling bag	45.00	Standard Gravel
1958	Silver Tray	90.00	Standard Gravel

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Gifts by Burns & Dutton and Standard Gravel to Mayor Mackay

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GIFTS BY BURNS & DUTTON CONCRETE AND
CONSTRUCTION COMPANY LIMITED AND
STANDARD GRAVEL AND SURFACING COMPANY
LIMITED TO MAYOR D. H. MACKAY

1955	Gift Certificate	\$ 50.00	Burns & Dutton
	Silver tray and jug	113.00	Joint gift from both Companies
1956	Gift Certificate	50.00	Burns & Dutton
	Lamp set	85.00	Standard Gravel
1957	Glass candelabra	68.00	Standard Gravel
	Aeroplane trips		
July 28	Wife and child to Rochester		
Aug. 9	Mayor to Rochester		
Aug. 17	Mayor, wife and child, Rochester to Calgary		
1958	T. V. Table		Burns & Dutton
	Italian figurines		Joint gift from both Companies.

With reference to the aeroplane trips, the logs show that the plane carried other passengers from Calgary to Fargo on July 28, other passengers on the plane returning from Rochester from the trip of August 9th and had other passengers on the trip from Calgary to Rochester on the trip which picked up the Mayor, his wife and child on August 17th.

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TRANSACTION BETWEEN MAYOR D. H. MACKAY
AND STAMPEDE MOTORS

Early in 1952 the Mayor approached Mr. Dutton and Mr. Jennings with the thought of building and operating a television station in Calgary. An engineering report was obtained from R.C.A. and when the cost was ascertained Messrs. Dutton and Jennings refused to entertain the project.

Then early in 1953, Mayor Mackay informed Mr. Jennings that he had a chance to obtain a second General Motors Buick-Pontiac franchise in Calgary if he could obtain the necessary financial backing.

In the meantime Mr. Dutton had given some thought to obtaining an automobile franchise in Calgary for his son Norman and had investigated the Packard franchise which had been held by Mr. Patterson.

Mr. Dutton stated that he would be interested in forming a Company to take up the General Motors franchise.

It was agreed that a Company would be formed with a capital of \$120,000.00 with \$30,000.00 being contributed by each of the following: Mr. Dutton, his son Norman, R.F. Jennings and Mayor Mackay.

It was understood at that time by both Mr. Dutton and Mr. Jennings that the Mayor was going to retire from public life and devote his whole time to private business. The Company was to be operated by the Mayor and Norman Dutton.

Mr. Dutton, his son and Mr. Jennings each paid into the Company the sum of \$30,000.00 but the Mayor did not pay in his \$30,000.00 and never did pay into the Company for his shares.

Preparations to commence business started in April 1953 with the Mayor and Norman Dutton taking an active part in organizing the business.

Through the efforts of the Mayor, a lease was obtained on a Service Station on 17th Ave. S.W. and on the 25th of May 1953, the Mayor purchased property for the Company at a cost of \$8,000.00. This sum was repaid to him with interest on August 21, 1953.

In the meantime Mayor Mackay signed an application for franchise on April 20, 1953. On April 29, 1953, a Direct Dealer Selling Agreement was executed between General Motors and Stampede Motors Ltd. The agreement was signed on behalf of Stampede Motors Ltd. by the Mayor, Mr. Dutton and Mr. Jennings.

On June 17, 1953 the Selling Agreement was amended by a document which was signed on behalf of Stampede Motors Ltd. by the Mayor who described himself as President and General Manager.

However, the records of the Registrar of Companies show that the directors elected on May 25, 1953, were Mr. Dutton, his son, Mr. Jennings and Robert G. McGregor. Mr. Dutton stated that Mr. McGregor was the General Manager.

Trouble arose between Mr. Dutton, Senior, and the Mayor. The Mayor announced that he was going to run for the position of Mayor again. According to Mr. Jennings and Mr. Dutton, General Motors advised them that if the Mayor was going to run again, it would not be possible to continue the dealership. Mr. Dutton, Senior, treated the announcement as the last straw. As a result the Mayor withdrew from the Company in August, 1953.

Mr. Dutton instructed Mr. Jennings to make a settlement with the Mayor.

A verbal settlement was arranged whereby the Mayor was to receive \$5,000.00 and a new Buick automobile.

Mr. Jennings issued a cheque for \$5,000.00 to a man named M. Rich who was living in Winnipeg. The cheque was sent to Mr. Rich at Winnipeg. Mr. Rich cashed the cheque and sent his own remittance for \$5,000.00 to the Mayor at Calgary.

The Mayor had been driving a 1953 Buick demonstrator. It was licensed in his name on February 4, 1954. On May 14, 1954, the Mayor took delivery of a new 1954 Buick at Oshawa, Ontario and the license on the 1953 Buick was transferred back to Stampede Motors Ltd. on that date.

The retail value of the 1954 Buick was \$5,962.45 and the wholesale value was \$4,399.34.

The verbal settlement was made in November or December 1953 but the cheque was not issued until late in

January or early in February 1954. Mr. Jennings said that he issued the cheque to Mr. Rich because he was not anxious to have a personal cheque to the Mayor to be seen going through the Bank.

There is no doubt that Mr. Jennings and the Mayor endeavoured to conceal the payment of \$5,000.00. A person with the business experience of Mr. Jennings does not ordinarily play hide-and-seek with a payment of \$5,000.00.

There was nothing in writing at any time to show that Mayor Mackay ever had an interest in Stampede Motors Ltd., except his signatures on the application for the franchise and the amended Selling Agreement. He had been repaid his investment of \$8,000.00 which he had paid for the property on 17th Ave. S.W. I presume he was repaid this amount when he withdrew in August otherwise if he had intended to become a shareholder, the money could very well have been applied on his promised \$30,000.00. There is nothing in writing to confirm the verbal settlement made between him and Mr. Jennings. The settlement was charged as a debt owing by Standard Holdings Ltd. to Stampede Motors. On page 1204 Mr. Jennings said that Mr. Dutton and he picked up the tab some one or two years afterwards. On page 1205 he said they picked up the tab "oh, three or four years later".

The Mayor received no other payment for his services in obtaining the franchise, and whatever other services he performed from April to August 1953, a period of five months.

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The only conclusion I can come to is that Mr. Jennings and the Mayor, realizing that the Mayor was drawing his salary as Mayor at the time, felt that the settlement might appear more than adequate to other people, and realizing that Messrs. Dutton and Jennings were doing a large business with the City at the time, decided to conceal the payment. It was not a sensible way in which to conclude a business transaction. If brought to light, it could only have the effect of casting suspicions on the bona fides of the transaction.

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WORK PERFORMED BY BURNS AND DUTTON

FOR MAYOR D. H. MACKAY

In 1955 the Company built a fence on the Mayor's property in Calgary at a cost of \$554.95. Invoice number 450/6 was dated July 31, 1955.

The Company built a fireplace in the Mayor's house in Banff in the year 1955. The fireplace was built by a sub-contractor and the Company paid the sub-contractor. The cost was \$1,750.00. Invoice number 434 for this item was dated February 28, 1956.

The Company installed a new living room window in the Mayor's house at Calgary in 1956 at a total cost of \$195.62 including 5% for overhead and supervision in the amount of \$9.32. Invoice number 475/48 for this item was dated July 24, 1956.

The Company built a car port at the Mayor's house in Banff in 1957 at a total cost of \$643.51 including a 5% charge of \$30.64 for overhead and supervision. Invoice number 501/30 for this item was dated October 10, 1957.

The Company did some alterations to the Mayor's house in Calgary in the summer of 1958, at a total cost of \$1,362.60. Invoice number 531/99 for this item was dated November 18, 1958.

In addition Standard Gravel hauled loam from Calgary to Banff in July 1958 and an account dated July 31,

Work performed by Burns and Dutton for Mayor D.H. Mackay

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1958 was issued on July 31, 1958 in the amount of \$494.00.

Until about the 27th day of November 1958 none of these accounts had been paid. The request for this Inquiry was made by City Council on September 29, 1958 and the scope of the Inquiry was set in its present terms by resolution of Council dated November 10, 1958.

The Mayor and the officials of Burns and Dutton said that the accounts of \$1,750.00 for the fireplace and \$554.95 for the fence were not paid because of the fact that the fireplace had been built improperly and would not work in a satisfactory manner.

The account of Standard Gravel for loam was settled on December 31, 1958 by the Mayor giving to the Company ten postdated cheques in the amount of \$50.00 each to cover the account. The Mayor stated that the cheques would be met out of rentals of the Banff house. At the time Mr. Jennings gave evidence the two cheques which were due had been paid.

On March 31, 1959 the Mayor paid to Burns and Dutton the sum of \$3,706.71 which paid the accounts covering the fireplace, the fence and the work done in the Mayor's house in Calgary in 1958.

With reference to the work done in the Mayor's house in Calgary in 1958, Mr. Burns gave the following evidence:

At page 1223 and seq.

"There was a little work up at his house". "a little work on the living room of the house, a little plastering

Work performed by Burns and Dutton for Mayor D.H. Mackay

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and a little renovation". "It is a few little repairs and alterations around the house." "I don't think it is quite completed. It is not on our books yet."

Mr. Burns' evidence that the account was not on the Company's books on February 27, 1959 (the day he gave evidence) is hard to explain in view of the fact that on March 31, 1959 the Company issued a statement to the Mayor showing Invoice No. 531/99 dated November 18, 1958 for this work.

I now wish to deal with the evidence given with reference to the accounts covering the window and the carport.

On the 27th day of February 1959, Mr. Burns gave the following evidence:

"Q After the fireplace, in 1957 you did the carport?

A Correct.

Q And the cost of that was what, sir?

A \$643.51.

Q And have you been paid for that, sir?

A Yes.

Q And when were you paid?

A I believe we were paid around July of last year.

Q That is July 1958?

A 1958 yes."

Then a discussion occurred between Mr. McGillivray, Mr. Helman and Mr. MacKimmie with reference to proof of

Work performed by Burns and Dutton for Mayor D. H. Mackay.

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payment and proof was not presented at that time.

In the meantime on December 8, 1958, Mr.

McGillivray had written to Mr. Helman concerning the carport and payments made on the same. The Mayor stated that he had discussed the matter with Mr. Helman and had instructed Mr. Helman to reply as follows:

"The car park was built by Burns and Dutton on October 10, 1957, and the receipt is dated July 15, 1958 which we assume would be approximately the date that payment was made."

On the 30th of April 1959, the Mayor and Mr. Burns were recalled to give further evidence with reference to the payment for the car port and window.

Their evidence was to the effect that on July 17, 1958, the Mayor called at the office of Burns & Dutton with reference to the work to be done on his Calgary house. He gave a cheque to the Company for \$500.00 on account of his indebtedness and asked the Company to hold the cheque until he sold some stock. The Company issued a receipt to him for \$500.00 showing it to be on account. The Company placed its copy of the receipt in its file dealing with the car port.

On November 25, 1958, the Mayor interviewed Mr. Burns. He discussed the two accounts covering the carport and the window. He complained to Burns over the charge of 5% in the amount of \$30.64 for overhead and supervision

Work performed by Burns & Dutton for Mayor D. H. Mackay.

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on the carport and \$9.32 on the window. He wrote a cheque for \$799.97 in payment of the two accounts, deducting the amounts of \$30.64 and \$9.32. He dated the cheque July 17, 1958 and asked Mr. Burns to give him a receipt for \$799.97 and to date it back to July. A receipt was issued dated July 15, 1958 for \$799.97, and read, "on account by cheque". What purports to be the company's carbon copy of the receipt was also placed on the carport file. Both the cheque of \$500.00 and the Mayor's copy of the receipt for \$500.00 were destroyed. The cheque for \$799.97 was cashed on November 27, 1958.

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TRANS CANADA HIGHWAY

Between 1954 and 1956 discussions took place between the City and the Province as to the location of the Trans Canada Highway immediately west of the City limits.

It had been agreed that the Highway would enter the City from the east, cross Nose Creek and proceed along 16th Avenue to 24th Street N.W.

The City suggested that from 24th Street N.W. the highway should be built in such a manner that it would cross the Bowness road at approximately 37th Street N.W., cross the C.P.R. main line and the Bow River and then go up what is known as the Shaganappi Gap on the south side of the river and then go westerly along the Old Banff Coach Road to connect up with the planned Highway.

The City favoured this plan because it would give the City another bridge across the Bow River which would materially assist the City in coping with the ever-growing cross river traffic. It would also tie in with the system of ring roads planned by the City in that the bridge would be part of the ring road linking the south western part of the City with the No. 2 highway.

The Province favoured a road which would proceed southwesterly from 24th Street N.W., crossing a portion of Shouldice Park, and crossing the river about 800 yards downstream from the Shouldice Bridge and rising from the river along a route south of the Bowness Golf Course.

The Province did not favour the route proposed by the City for the following reasons:

- (1) the gradient up the Shaganappi Gap was steeper than Trans Canada standards.
- (2) there would be curves on the road up the Gap.
- (3) the combination of steep gradient and curves would make the road a very dangerous one.
- (4) the bridge would be 60 feet above the water and very expensive.
- (5) there was a possibility of expensive rock work.

By 1956 the City and Province had agreed to the proposals of the Province and it was agreed that the road would be built on the north side of the River through Montgomery, crossing part of Shouldice Park, and crossing the river by a new bridge.

Standard Gravel and Surfacing of Canada Limited was, in 1956, and still is the owner of land situated west of 37th Street, N.W. (the western City limit north of the River). Their holdings extend to 45th Street, N.W., which in 1956 was the eastern limits of the Hamlet of Montgomery. The southern boundary of their holdings is Bowness Road and their holdings extend north of 16th Avenue, N.W. This land was at that time situated in Local Improvement District No. 46.

In 1953 the Interim Development Board of Improvement District No. 46 granted a development permit to the

Company in respect to the erection of an asphalt mixing plant, weigh scales and office. The permit expires on March 6, 1963. In 1954 the Company leased its interest in all sand and gravel on the premises to Peerless Rock (one of the Dutton Companies). Peerless Rock supplies materials to Standard Gravel (who hold contracts for paving with the City) and to Burns & Dutton (who hold sidewalk contracts with the City).

In the spring of 1956 the Government was negotiating with the Company for a right-of-way crossing the Company's property. The Company and the Government could not agree on compensation to be paid for the right-of-way.

In June 1956 the Minister of Highways indicated to City officials that because of the high compensation claim being made by the Company, the Government might abandon the planned route across the Company's land and use the right-of-way of 16th Avenue N.W. across the Company land. This right-of-way was owned by the Crown although never developed or used as a roadway.

The Interim Development Board had directed the Company as to location of its buildings. As a result, parts of an integrated business were being conducted on both sides of 16th Avenue N.W. on the property of the Company. If 16th Avenue N.W. had been used as the route of the Highway through the property of the Company, the operations of the

Company would have been seriously disrupted.

In the month of July 1956, Standard Gravel and Peerless Rock employed Ivan Robison, a Calgary Realtor, to prepare a brief to be submitted to the Provincial Government.

The brief set out the facts concerning ownership of the land, the permit issued by the Interim Development Board, the lease to Peerless Rock Products, the operations, the plan for future development of the site as a residential area.

The brief then discussed three possible routes for the Highway crossing the property of the Company.

The brief raised many objections to what was known as Route "A" which was the Route originally chosen by the Government and agreed to by the City.

The second Route discussed was the proposal to use the 16th Avenue right-of-way of 66 feet in width. The brief stated that the building of the highway on this right-of-way involved the firm opposition of the City of Calgary and that any policy laid down as to the location of a major arterial highway should consider the viewpoint of the City.

The brief also pointed out that the Companies might be able to claim compensation because their plant and equipment had been located pursuant to the terms of the Permit referred to.

The brief then outlined a third route, Route "C". The Company offered a right-of-way 150 feet in width situated to the north of 16th Avenue N.W. in exchange for the 66 feet right-of-way along 16th Avenue N.W.

The brief stated that the gradients and curvatures would be within the limits prescribed in the regulations for the Highway and that the gradient would be less than the gradients on the two approaches to Nose Creek.

The brief also pointed out that the acceptance of the proposals of the Companies would avoid the possibility of delay in completion of the highway, avoid the possibility of protracted negotiations and legal proceedings and would avoid the possibility of unfavourable publicity.

On August 1, 1956 Mayor D.H. Mackay wrote to the Minister of Highways stating that the Board of Commissioners had examined the brief and then said,

"May I place our Board on record as favouring the submission as it will be presented by Mr. Robison.

We feel that all matters considered, the best solution in the interests of all concerned would be to handle this particular phase of the routing through the City of Calgary in the manner as outlined in Mr. Robison's brief."

The Minister replied on August 7th asking,

- (1) Did the City endorse route "C" only because of the 150' right-of-way.

- (2) Did the City favour the curvature in Route "C" as compared to the straight alignment on 16th Avenue.
- (3) The reasons that made the Route recommended by the Companies preferable to the 16th Avenue route.

Correspondence with the Government was carried on from this date by Commissioner Strong.

On August 16, 1956, Commissioner Strong replied that the City favoured Route "C" because at some future date the City might be faced with acquiring a wider right-of-way along 16th Avenue. Also Route "C" would tie in better with the proposed ring road. Route "C" would also save a considerable amount in compensation although this was a Government problem.

No reply was received to this letter. On October 22 Mr. Strong again wrote the Minister repeating the arguments he had set forth in his previous letter.

On October 26th, the Minister replied to Mr. Strong. He pointed out that adequate right-of-way could be provided for on any of the three proposed routes, the gradients and curvatures of Route "C" were not satisfactory, and the route did not provide adequate sight clearance. In conclusion the Minister stated that the Companies' proposal had inferior alignment, inferior gradients, poor sight clearance and involved moving an unnecessary amount of earth.

On November 2 Commissioner Strong wrote again to

the Minister that the proposed road would traverse what would soon be a built up area and the gradients would be less than the Nose Creek gradients.

In the second last paragraph of his letter, he said:

"In other words, we are giving our approval to a compromise proposal which we feel will in no way jeopardize or prejudice the interests of the motoring public and which will, in effect, become a major metropolitan street having much better engineering features than many of our present major thoroughfares."

On November 9 the Minister replied stating he could not understand the comparison with Nose Creek. He repeated his objections to alignment on Route "C" and ended his letter by saying "it is difficult for me to understand why anyone would want to accept the 'compromise' route."

After this date the Government agreed that the building of this part of the highway would be delayed until the remainder of the highway from Calgary to Banff was completed. It was agreed that the original Route "A" would be used and that in the meantime the Company would remove the gravel from the proposed route and would stockpile it if necessary.

CHINOOK SHOPPING CENTRE

This shopping centre is being built on the Macleod Trail in the southern part of the City. Mr. Dutton is president of the Company. Woodward's will be the main store in the centre.

Discussions have taken place with the City with reference to the traffic problems which will arise as a result of the building of the shopping centre.

At the present time the Macleod Trail takes care of the major portion of the traffic entering Calgary from the south. The problem is growing very rapidly as large housing developments take place east and west of Macleod Trail.

The City has proposed that a clover leaf will be required. The Company suggested that the situation can be handled with traffic lights. A clover leaf will require extra land and possibly owners of property would have some of their land taken for the purpose of the clover leaf.

In June of 1958 Chinook Shopping Centre suggested that they would be willing to pay the expenses of a representation from the City to examine the traffic arrangements at the Northgate Shopping Centre north of the City of Seattle.

Mayor Mackay, City Planner Martin and Traffic Controller Grant boarded a yacht, owned by Mr. Dutton and others, at Vancouver and travelled from Vancouver to Seattle. They examined the traffic arrangements at Northgate. Mayor

Mackay returned from Seattle to Calgary on an aeroplane owned by the Dutton interests. Mr. Grant came back on the yacht from Seattle to Vancouver.

In his evidence Mr. Dutton was of the opinion that Chinook Shopping Centre had paid the expenses of the trip.

At page 1139 he said:

"The company paid, the Chinook Shopping Centre paid the expenses. I think they did. I haven't seen the City back up yet, when you offer them something that they do not take up."

The Company's solicitor in some way also received the same advice. At page 1143.

Mr. MacKimmie:

"Now, Mr. Dutton, you told Mr. McGillivray this morning that you thought it would be a charge to Chinook to pay the air fares for Mr. Grant, and whoever the other one was, from Calgary to Vancouver. Are you aware of the fact that those bills were just submitted about two days ago?

A No I was not.

THE COMMISSIONER: What bills?

MR. MacKIMMIE: My information is, Mr.

Chairman, that the City, since the company wanted these officials to see the Seattle shopping area, that those accounts be paid by them and, as a matter of fact, they just have come through."

At pages 746 to 749 Mayor Mackay suggested that the expenses of the trip had been or would be paid by Woodward's, or those interested in the development of the shopping centre. The Mayor stated he did not know what the financial background of the thing was.

Whoever gave these instructions to Mr. MacKimmie was greatly in error and the publicity given to them was very disturbing to Commissioner Batchelor. At page 1154 Mr. MacKimmie stated that no accounts whatever had been rendered by the City to Chinook Shopping Centre for the expenses of Martin and Grant and that the only item assumed by the Shopping Centre was the free yacht trip from Seattle to Vancouver for the Mayor, City Planner and Traffic Engineer and the return yacht trip for the Traffic Engineer.

With further reference to the Chinook Shopping Centre the City sold one-and-one-half acres of land to the Company for \$15,000.00. Mr. Dutton believed that the City should have given the land to the Company and that their hands should shake if they took the money. Mr. Dutton's feelings with reference to dealings with the City in reference to the Chinook Shopping Centre were expressed at page 1147.

"When a party of Calgarians tries to put on a project, or put a project across, such as we are trying to put across, with local people concerned in Calgary, I think that the City has leaned backwards to make it tough for us over there."

SIDEWALK, CURB & GUTTER CONTRACTS

(a) 1953 Contract

Tenders were called and five tenders were received. The three lowest tenders were received from,

Burns & Dutton	1,197,362.50
Mannix Ltd.	1,327,550.00
Assiniboia	1,332,665.00

Mannix and Assiniboia bid approximately 10% higher than Burns & Dutton. The contract was awarded to Burns & Dutton.

(b) 1954 Contract

Tenders were called and five tenders were received. They were as follows:

Assiniboia	833,662.50
Burns & Dutton	925,977.50
Poole Construction.	928,631.55
Bird Construction	953,149.55
Wuppel Concrete	1,002,752.00

On this tender Burns & Dutton were approximately 10% higher than Assiniboia. The tenders for 1953 and 1954 show that Burns & Dutton increased their unit prices between the two years as follows:

Curb & Gutter	1.45 to 1.70
Monolithic	2.85 to 3.00
Sidewalks	.35 to .50 including crossings plus .55 for crossings

Sidewalks, curb and gutter contracts.

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Assiniboia lowered their unit prices in 1954 as compared to 1953 as follows:

Curb & Gutter	1.55	to	1.40
Monolithic	3.15	to	2.80
Sidewalks	.41	to	.38 plus .15 for crossings plus .62 for crossings.

Mr. Thomas was City Engineer in 1954. Tenders closed on April 5th. Mr. Thomas discussed the tender with Mr. Paget of Assiniboia and satisfied himself that Assiniboia understood the terms of the tender and were equipped to do the work. On April 9th Mr. Thomas wrote to the Commissioners recommending that the contract be awarded to Assiniboia. The Commissioners endorsed the recommendation in their report to Council of the same day.

The matter came before Council on April 12th. A copy of the Commissioners' report of April 9th has a notation that the sidewalk recommendation was tabled for two weeks. There is nothing in the Minutes of Council for April 12th to show that the item was tabled. The motion moved by Alderman Shannon, seconded by Alderman Brecken, and carried, was as follows:

" That the Commissioners' Report dated April 9, 1954 be adopted subject to motions."

There is no motion on record with reference to Clause 6 of the Commissioners' Report which dealt with the

Sidewalks, curb and gutter contracts

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sidewalk contract.

Then on April 21, 1954, Mr. Paget for Assiniboia wrote to the Commissioners withdrawing its tender. The letter read in part

"After further discussion with your Engineers it now appears that we misinterpreted certain conversations we had with your Engineers prior to making our tender as to what was expected under the terms of the contract."

On April 23, 1954, the Commissioners in their report to Council stated that after discussing the matter with officials of Assiniboia and City Engineers, the Commissioners were satisfied that the Company's bid was made without full knowledge of the conditions of the contract. The Commissioners recommended that the withdrawal of the tender by Assiniboia be accepted and the contract awarded to Burns & Dutton.

The recommendation of the Commissioners was accepted by Council at its meeting of April 26 in that on motion of Alderman MacEwan, seconded by Alderman Morrison, the Commissioners' Report of April 23 was adopted subject to motion and there was no motion on the sidewalk contract, except a motion by Alderman Parker, seconded by Alderman Smith that the Commissioners' recommendation on sidewalks dated April 6th be filed. The contract was therefore awarded to Burns & Dutton.

What has happened in the meantime?

The original specifications contained the following clauses:

E Concrete Sidewalk

E.1. Placing

Concrete shall be placed in accordance with the details of Article C.5 herein. One cubic yard of concrete should yield 14.5 lineal feet of 4' - 6" wide sidewalk and 13.0 lineal feet of 5' - 0" wide sidewalk.

F Concrete Curb and Gutter

F.1. Placing

Concrete shall be placed in accordance with the details of Article C.5 herein. One cubic yard of concrete should yield 32.0 lineal feet of curb and gutter.

G Combined Concrete Sidewalk, and Concrete Curb and Gutter
(Monolithic)

G.1. Placing

Concrete shall be placed in accordance with the details of Article C.5 herein. One cubic yard of concrete should yield 10.6 lineal feet of monolithic (sidewalk 4' - 6" wide).

Each clause also stated that yardage checks of the mixer trucks would be made every two weeks.

On March 24, 1954 the City issued Addendum #1 to the tender and this dealt with the 28 day compressive strength test of the concrete.

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On March 31, 1954 the City issued Addendum #2 and #3 to the tender.

Addendum #2 referred to Clause F.1 dealing with Concrete Curb and Gutter and this was changed to read,

"One cubic yard of concrete should yield not over 26 lineal feet of curb and gutter".

Addendum #3 referred to Clause G.1 dealing with monolithic and this was changed to read,

"One cubic yard of concrete should yield not more than 10.6 lineal feet of monolithic (sidewalk 4' - 6").

As a result of these changes, the wording dealing with sidewalks only was not changed.

On the curb and gutter and monolithic the wording was changed from "should yield" to "should yield not over" and on the curb and gutter item the length to be provided by one cubic yard of concrete was reduced from 32.0 feet to 26.0 feet.

Then after tenders were open and on the same day as Mr. Thomas wrote to the Commissioners recommending that the contract be awarded to Assiniboia, on April 9th, Mr. Nelson, Asst. City Engineer wrote to Mr. Paget of Assiniboia stating that in order to clarify certain clauses in the contract, the following Addenda would be added.

Addendum #4 - all references to yield of one cubic yard of concrete in terms of area of sidewalk, combined sidewalk and curb and gutter or length of curb and gutter

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were to be deleted from the specifications.

Addendum #5 dealt with an interpretation of terms of payment for sidewalk crossings.

Mr. Paget stated that when he was advised that the clauses dealing with length to be obtained from a cubic yard of concrete were deleted from the contract, he estimated that these deletions would add \$40,000 to \$50,000 to his costs.

The tenders read that in case of conflict, specifications superseded the drawings. The drawings called for a depth of $4\frac{1}{2}$ inches of concrete in both kinds of sidewalks. He stated that it was impossible to obtain an area of concrete on a monolithic sidewalk 4' - 6" x 10' - 6" x $4\frac{1}{2}$ " plus the curb and gutter from a cubic yard of concrete. He stated that in previous years, the concrete was measured by placing a cubic yard of it over the area covered by the length of 10' - 6" and this measure was accepted and paid for by the City. This, of necessity, did not provide an overall minimum depth of $4\frac{1}{2}$ inches above the gravel, especially because some of the concrete would penetrate the gravel (notwithstanding the requirement that the gravel be tamped). He said that he was also advised that the City intended to use the template system of measuring the depth of concrete in 1954 to ensure the overall minimum depth of $4\frac{1}{2}$ inches whereas in previous years, the City had merely made spot checks to ensure that an average of $4\frac{1}{2}$ inches

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was being used.

In 1954 Mr. Strong was Commissioner of Public Works, Mr. Thomas was City Engineer, and Mr. Nelson was Assistant City Engineer. In giving evidence none could recall when the template system had been introduced.

In his evidence Mr. Nelson stated that he feels sure that the Addendum dated April 9 which deleted reference to yield per cubic yard was not sent out without Mr. Paget's concurrence. There is some corroboration of this statement because the Addendum dealing with payment of sidewalk crossings dealt with the method in which Assiniboia had bid on the sidewalk crossings. In the Burns & Dutton tender which was finally accepted there was no separate bid on the 80,000 feet of sidewalk crossings as Burns & Dutton bid 50 cents a square foot on the total of 180,000 square feet of sidewalks only. Assiniboia bid 38 cents a square foot on 180,000 square feet and then bid 15 cents on 80,000 square feet of sidewalk crossings.

Although Mr. Paget was unable to find his copy of the letter of April 9th which deleted the reference to the cubic yard of concrete, he did point out at page 1810 that the question of payment for sidewalk crossings had been cleared up to his satisfaction, and that this matter was important as it involved a difference of some 30 odd thousand dollars.

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Mr. Paget stated that he had one meeting with the City Engineering Department. City officials stated that when Mr. Paget left this meeting, they had no idea that he intended to withdraw from the contract.

Mr. Paget said that finally on the 21st of April he wrote the letter withdrawing his bid.

In his evidence Mr. Paget stated as follows with reference to his bid:

He had no complaint to make with reference to the bid on sidewalks only.

He had no complaint to make with reference to the bid on curb and gutters after the length to be provided by one cubic yard of concrete was reduced from 32 to 26 feet.

His only complaint was in reference to monolithic.

It is interesting to make the following comparisons between the bids of Assiniboia and Burns & Dutton.

	<u>Assiniboia</u>	<u>Burns & Dutton</u>
Sidewalks only	\$ 80,400	\$90,000
Curbs & Gutter	140,000	170,000
Combined (Monolithic)	560,000	600,000

On Sidewalks, Assiniboia underbid Burns & Dutton by about 10%, on curbs and gutters by about 20% and on monolithic by about 7%.

There are some unanswered questions with reference to the withdrawal of this bid.

- (1) Why was no mention made in the Council meeting of April 12, 1954 of the tabling of the recommendation of the Commissioners that the contract be let to Assiniboia.
- (2) Why was the recommendation tabled? Who asked that it be tabled? Mr. Paget said he did not speak to the Commissioners or any member of the Council. His letter was not written until nine days after the Council meeting on April 21.
- (3) Why did no one on the Council inquire into the reasons for the withdrawal. Surely an extra cost of \$90,000.00 to the City merited some inquiry?
- (c) 1955 Contract

Tenders were called and two bids were received as follows:

Burns & Dutton \$363,581.50

Poole at 371,610.00 corrected to 368,730.00.

The contract was awarded to Burns & Dutton as the low bidder. Prior to 1955 the sidewalk, curb and gutter contracts had contained a list of the blocks and streets on which construction was to take place. This was discontinued in 1955 and since that year no mention of the actual sites of the work is made in the yearly contracts.

In 1955 Burns & Dutton increased their prices over the 1954 contract by .5 cents a square foot on sidewalks

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only, 20 cents a lineal foot on curbs and gutters and 15 cents a lineal foot on monolithic.

(d) 1956 Contract

Tenders were called on a one year contract and a three year contract. The following tenders were received.

<u>One year contract</u>		<u>Union or Non-union</u>
Fort Construction	\$ 375,292.40	Non-union
Burns & Dutton	387,914.00	Union
Poole	445,945.00	Union
Mannix	448,573.00	Union
<u>Three year contract</u>		
Fort Construction	1,098,181.58	
Burns & Dutton	1,123,242.00	

According to Mr. Thomas (Page 2022) Fort reduced their bid on the three year basis by $2\frac{1}{2}$ on the first six items whereas Burns & Dutton varied their bids all the way through on the three year basis. This latter statement is not correct as a comparison of the 1956 contract signed by Burns & Dutton and Schedule B which sets out the three year prices shows that there was a variation in two items only, the unit prices on the sidewalks only and on monolithic.

On April 11, 1956, the City Engineer, Mr. Thomas wrote to the Board of Commissioners :

"We have checked into the work of this contractor (referring to Fort Construction) and find that his

financial condition, plus his workmanship is adequate for carrying out our program. Of course, as you can realize, being a new Company we will have to keep a very careful check on the work as we would have to do with any new Company coming in. This does not indicate that we do not keep a close check on all work carried out, but supervision would have to be extended in the case of a new Company - - -

"In view of the foregoing comments and low bid of Fort Construction Company Ltd., a recommendation is submitted that the contract be awarded to Fort Construction Co. Ltd. for one year at the unit prices outlined in their tender. I must point out, however, that with a very heavy work program lined up for 1956 and the pressure of work involved, a contractor familiar with our methods of construction and various requirements would relieve us of many problems which would otherwise require considerable time and work to explain to a new Company."

It is sad to relate that the hopes of Mr. Thomas were not borne out by subsequent events and problem was piled upon problem as a result of the action of the City Council.

On April 13th the Commissioners reported to Council. They attached a copy of the letter of Mr. Thomas and showed Fort Construction as being a non-union firm and

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the other three firms as being union firms.

In their report the Commissioners pointed out that the contract provided for re-construction of sidewalk in the downtown area as well as construction in residential areas. The timing of the work to be done in the downtown area was of vital importance and the City would be better served by awarding the contract to Burns & Dutton because of their experience and familiarity with the City's operations, and the need for completing the job as quickly as possible. The firm is local, does very satisfactory work, and is familiar with the liaison and procedures necessary to do the downtown area with a minimum delay. The Commissioners also believed that the difference of 3% in the bids would be more than offset by the fact that the City would be dealing with a firm that is well organized and equipped to do the job with a minimum of supervision by the City. The Commissioners ended their report by recommending that the contract be awarded to Burns & Dutton for a one-year period.

The Commissioners' Report was considered at the Council Meeting of April 16th. The Mayor was not present.

Alderman Macdonald moved, seconded by Alderman McKay that the contract be awarded to Fort Construction. They were supported by Aldermen Brecken and Mack. Aldermen Boote, Morrison, McIntosh, Starr, Parker, Lyle and Mrs. Stevens voted against this motion. The contract was then

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awarded to Burns & Dutton on motion of Aldermen Starr and Boote and supported by all Aldermen except Macdonald, McKay and Brecken.

At the Council Meeting, City Engineer Thomas also orally recommended that the contract be awarded to Burns & Dutton. Mr. Shannon, solicitor for Fort Construction appeared at the meeting and urged that the contract be awarded to Fort Construction.

Mr. Bodie appeared and spoke with reference to union conditions of Gallelli who was to be a sub-contractor of Fort Construction.

The tender submitted by Burns & Dutton is dated April 9, 1956. Attached to the tender is a consent from General Accident Assurance Company of Canada in which they undertake to issue a guarantee bond in connection with the construction of curbs, gutters and catch basins, 1956 program. The tenders were opened on April 9th, 1956.

According to Mr. Burns work was started immediately. At page 1212, Mr. Burns said:

"As soon as the contract was awarded, or as soon as we were notified that we had been awarded the contract, work was started immediately to get the downtown area in shape, to get it, to complete it by Stampede Week, and in the meantime I believe the documents, and so forth, came in regarding the contract."

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However, Mr. J L. Simpson, General Manager of Burns & Dutton said, Page 2146:

"Now with the City of Calgary you get this letter, but this is a typical example where it has not any truth in it, and we could not start the work on it.

Q Until the contract is signed?

A Until the contract is signed."

Page 2149

"Q Now that is on the 24 April that Mr. Bredin forwards to you three copies of the contract and asks you to execute them. Now you say that until you get a contract signed by the City you do not feel that you have got anything? That is correct, isn't it. I mean, the fact that Council has given you something at a Council meeting does not mean anything by itself?
THE COMMISSIONER: I wonder, Mr. McGillivray, if that applies to curb, gutter and sidewalks?

MR. MCGILLIVRAY: Well, Mr. Simpson?

A I have made that statement numerous times, yes.

Q Yes?

A You are quite aware of that.

Q THE COMMISSIONER: You would not start the contract until it was signed on curb, gutter and sidewalk, with the City Engineer probably pushing you to get

on with the job? Maybe that does not occur in Calgary.
A Speaking from memory, sir, but I do not believe that we have ever started a job prior to signing the contract. Now we might have made some preparations in preparing that would not really affect our financing if the contract did not go through."

The contracts were forwarded to Burns & Dutton on April 24. They returned them signed to the City on May 18th. The City signed the contracts and returned a completed contract to Burns & Dutton on May 28th.

At page 2289 Mr. Thomas gave evidence that Burns & Dutton started excavation on the downtown sidewalks on May 1 and the first pour of concrete took place on May 7.

On the 3rd day of May 1956 General Accident Assurance Company issued a bond in the amount of \$96,978.90 being 25% of the contract awarded to Burns & Dutton on a one year basis in the amount of \$387,914.00. Burns & Dutton had signed an application for a bond on March 9th in the amount of \$105,000.00 based on 25% of an estimated \$420,000.00 contract. The Assurance Company was advised of the correct amount of the contract and the correct contract price of \$387,914.00 and the correct amount of the bond \$96,978.50 were inserted in this application as well as the amount of the bid of Fort Construction in the amount of \$375,292.00.

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On the 18th of May 1956 Burns & Dutton applied to the Assurance Company to have a new bond issued in the amount of \$280,810.50 being 25% of their bid of \$1,123,242.00 on a three year basis. This bond was issued and was forwarded to the City by Mr. Simpson when he sent the signed contracts to the City on that day. The premium on the first bond was \$1,163.74 and was \$3,369.70 on the second bond.

The contract as prepared by the City and forwarded to Burns & Dutton contained two serious errors.

Paragraph 20 of the General Specifications stated that the contract would be terminated at the end of the 1955 construction season.

Article 3 of the Memorandum of Agreement stated that the City undertook to pay to the contractor for the performance of the contract \$1,123,242.00 subject to additions and deductions as provided in the General Conditions of the Contract.

And the Contract was not even dated. Mr. Simpson said that when the contract came before him for signature, he noticed that the contract called for a payment of \$1,123,242.00. He, therefore, believed that the City had given the Company the contract on a three year basis. He gave instructions that a new bond be obtained from the Bonding Company to cover the three year figure.

In his report to head office, Mr. Peddie of the

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Bonding Company wrote as follows on June 21, 1956:

"The original tender of \$387,914 was for work likely to be completed this year.

"This work progresses as weather conditions permit and as the City Council agreed that the contractor was the only firm that could be relied upon to make all possible progress the contract was subsequently extended to include three times the original program. The new Contract price was negotiated.

"The contract now will take more than one year to complete but just how long cannot be presently terminated."

Mr. Peddie finally stated that the information passed on in this letter to his head office would have been obtained from Burns & Dutton.

The work commenced on May 1 and continued throughout the construction season of 1956.

The City made payments to Burns & Dutton on the basis of a one year contract and these payments were accepted by the Company without comment.

The difference in payments between the one year contract and the proposed three year contract was 5 cents a square foot on sidewalks only and 15 cents a lineal foot on monolithic. The difference would be an extra payment of \$4,500.00 on sidewalks and \$9,000.00 on monolithic.

When Burns & Dutton forwarded their first progress

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claim for payment, a dispute arose as to the method of payment for the downtown sidewalks.

Mr. Simpson prepared a memorandum for Mr. Jennings on July 24, 1956 and in that memorandum set out the unit prices on the basis of the one year contract. He also referred to a Note at the bottom of the one year schedule.

The City claimed that it was only liable for payment of \$3.15 a lineal foot for monolithic plus \$3.00 a lineal foot for breaking up the old sidewalk.

The Contractor claimed that City prices were based on a sidewalk $4\frac{1}{2}$ feet wide. The down town sidewalks were 10 feet wide. The Contractor claimed that under paragraph M which provided for extra payment for extra width it should receive an extra payment of \$16,800.00.

A meeting was held on July 26 attended by Mr. Burns and Mr. Simpson for the Company and Messrs. Thomas, Nelson and Bailey for the City.

It was agreed that the matter in dispute would be left in abeyance.

During the early part of November 1956 another meeting took place between Mr. Simpson and Mr. Thomas.

Mr. Thomas said in evidence that before the contract was awarded in the spring, he had checked with Burns & Dutton and with Fort Construction. He said that both Companies agreed that the following notes on the bottom of Schedule A :

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Note 1. Schedule "A" includes downtown replacement program.

Note 2. Downtown program will consist of replacing 4,000 lineal feet of approximately 10 feet wide monolithic sidewalk, curb and gutter.

Note 3. In downtown area 3500 p.s.i. concrete will be required.

meant that the Company awarded the contract would do this work at the unit prices set out in Schedule A without regard for the provision of paragraph M requiring extra payment for extra width.

At the meeting, Mr. Simpson agreed to this interpretation but the agreement made at this meeting went far beyond this.

In a letter dated November 9, 1956, Mr. Thomas wrote to Mr. Simpson as follows:

"On page three of the General Specifications, the termination of the Contract is shown as 1955. This was inadvertently placed there from the old contracts and did not take into consideration the fact that the contract was for three years. Will you kindly make the necessary correction by changing the date 1955 to 1958?"

Then with reference to the downtown sidewalks, Mr. Thomas set out the interpretation for payment. The City would pay \$6.15 per lineal foot for 4,000 feet of monolithic built in any one season regardless of the width of sidewalk. If more than 4,000 feet were built in any one construction

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season, then an extra payment for the extra width would be paid to Burns & Dutton.

Mr. Thomas sent copies of this letter to Mr. Bredin, Mr. Walshaw and Mr. Dry.

Mr. Simpson acknowledged receipt of this letter on November 15, 1956 and agreed to the conditions set forth in the letter.

Mr. Simpson stated that relying on his understanding that the contract was for three years, the Company went ahead during the winter and made up a large number of catch basins in preparation for the 1957 work.

On February 5, 1957, Mr. Bredin, City Solicitor, wrote to Mr. Simpson. He mentioned the letter of Mr. Thomas dated November 9, 1956 and said that he had taken the matter up immediately after November 9 with Mr. Thomas and had been under the impression that Mr. Thomas had written to Mr. Simpson to make it clear that the contract was a one year contract. Mr. Bredin went on to point out that the contract was a one year contract and he enclosed a copy of Council's Minutes with reference to the awarding of the Contract.

Mr. Simpson replied on February 7. He said that his Company had a three year contract and that it was proceeding with preparations for continuing the contract during 1957 and 1958.

He suggested three alternate proposals of settlement.

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Mr. Thomas stated that he did not remember that Mr. Bredin had spoken to him about his letter of November 9. Mr. Bredin said he had no recollection of the conversation with Mr. Thomas but he felt sure that he had the conversation, otherwise he would not have mentioned it in his letter to Mr. Simpson.

The Commissioners (Mr. Thomas having in the meantime become a Commissioner) met with Mr. Bredin. In view of the errors made and the letter written by Mr. Thomas, it was agreed that the Commissioners would recommend to Council that the contract be extended for a further period of two years.

On March 28, 1957 the Commissioners recommended to Council that the Council endorse the existing contract as a three year contract. The Commissioners stated that the contractor was under the impression that the contract was for three years due to the fact that the total amount of the three year contract was inadvertently included in the agreement, and on this assumption, it has been continuing its preparations for the 1957 work, involving a considerable cash outlay. The Commissioners further stated that the tender prices were considered to be very good prices.

The Council refused to agree to the recommendation and on April 1, 1957 directed that tenders be called for this 1957 work on a motion which was opposed by Alderman

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Starr, Mrs. Stevens and the Mayor.

On being so advised by letter from the City Solicitor dated April 10, Mr. Simpson replied on April 10 advising the City that a statement of claim was being prepared.

(e) 1957 Contract.

Tenders were called and five bids were received. The two low bids were:

Burns & Dutton	\$386,175.00
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Transcrete Company Ltd.	391,655.00
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The contract was awarded to Burns & Dutton.

Their tender included an item of 120 type K. Catch Basins at \$220.00 each for a total of \$26,400.00. The City had changed the design of the catch basin. The City considered the bid on catch basins too high and built the catch basins itself. It is to be noted that in the 1958 tender, Burns & Dutton reduced their unit price on type K catch basins to \$160.00.

(f) 1958 Contract

The City did not have enough money in 1957 to complete its capital works program.

On April 30th, 1958 the Commissioners reported to Council as follows:

1. Burns & Dutton Sidewalk Contract

1957 Contract	\$386,175.00
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Paid	<u>\$318,328.26</u>
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Short of Contract amount	67,846.74
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This report apparently did not take into consideration the cancellation of the catch basins in the amount of \$26,400.00. The Commissioners stated that the proposed 1958 sidewalk program called for \$612,100.00 of which the City would do \$300,100.00 leaving \$312,000.00 for contract and they recommended that the 1957 contract be extended to Burns & Dutton to cover this amount.

2. Paving - Standard Gravel

1957 Contract	\$2,020,760.00
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Paid	<u>983,138.25</u>
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Short of Contract amount	1,037,621.75
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Commissioners recommended that \$521,879.94 of the 1958 program be given to Standard Gravel as an extension of the 1957 Contract.

3. Storm Laterals - Borger Brothers

Borger Brothers had not completed \$183,990.55 of the 1957 Contract. Commissioners recommended that this contract be extended to 1958 for a total of \$680,000.00.

Sanitary Ditching - Mallett

Mallett had only completed \$44,774.70 out of a \$174,700.00 1957 Contract. Commissioners indicated work totalling \$35,000.00 in 1958 and recommended that the Contract be given to Mallett on the 1957 basis.

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On May 2, 1958, Council asked for further reports on these recommendations except that Borger was to receive an extension of the 1957 Contract.

On May 8, 1958, Commissioners made a further report to Council.

On May 12, 1958, Council directed that tenders be called for the additional sidewalk work, amounting to \$659,000.00 over and above the amount of the Burns & Dutton 1957 Contract.

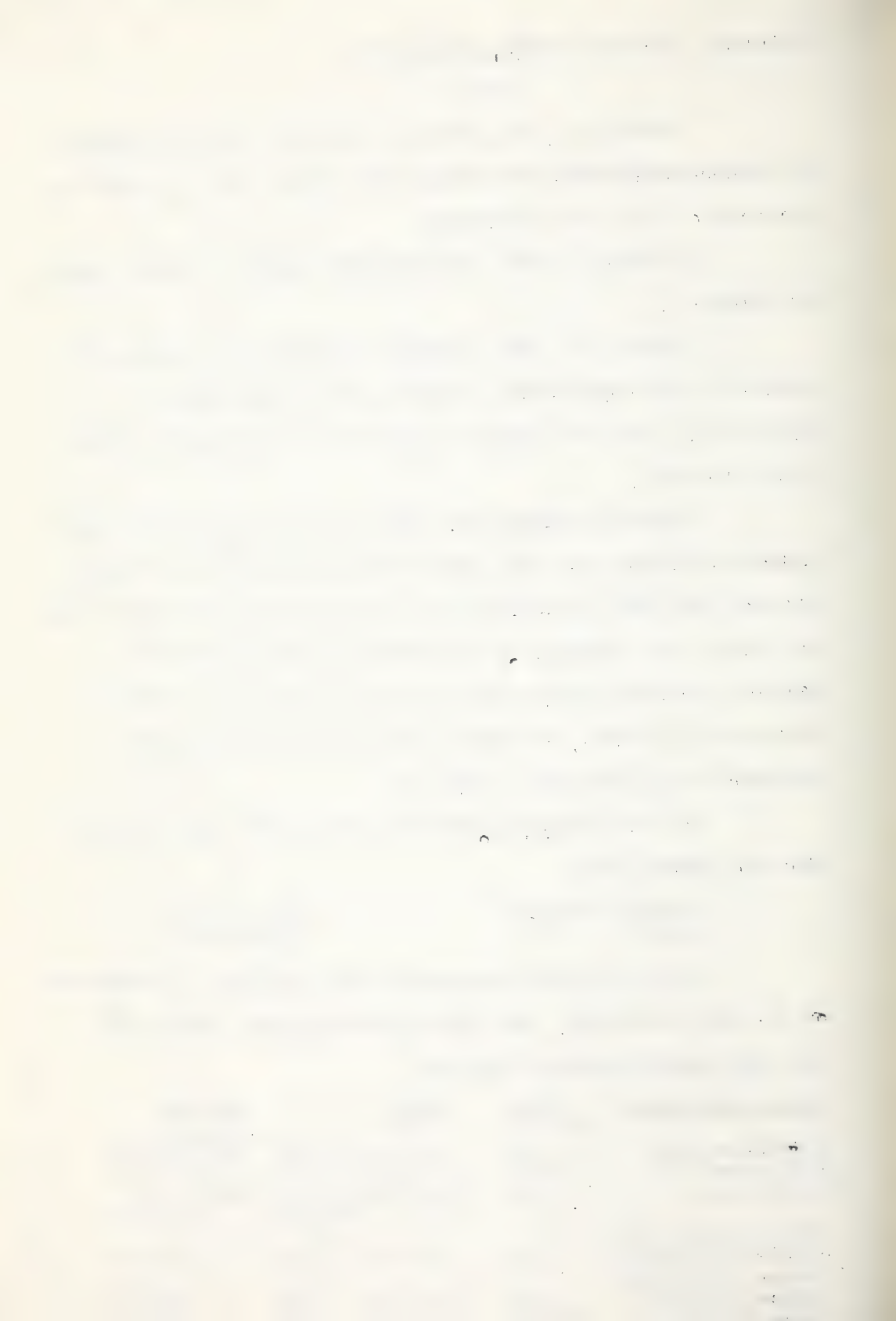
Council extended the 1957 Borger Bros. storm sewer laterals Contract to take care of the unfinished 1957 work, awarded \$220,000.00 of the work to Mallett at the same prices and called for tenders on the balance of \$276,000.00. Mallett was also authorized to carry on sanitary ditching at the 1957 prices. No mention was made of the Paving Contract in the Minutes of May 12.

On the sidewalk Contract, five bids were received. The two lowest were:

Burns & Dutton	\$411,210.00
Poole	452,000.00

Burns & Dutton sharpened their pencils in tendering on the 1958 contract. The comparisons between their 1957 and 1958 tenders are as follows:

<u>Residential Area</u>	<u>1957</u>	<u>1958</u>	<u>Saving</u>
Sidewalks only	.55	.40 on 80,000	\$12,000.00
Curb & gutter	2.00	1.75 on 75,000	18,750.00
Monolithic	3.30	3.00 bid on 4.5' walk 20,000	6,000.00
Pitrun gravel for unstable material	4.00	1.50 on 1,500	3,750.00
Pitrun gravel for grade changes	3.00	1.00 on 200	400.00
Catch basins	220.00	160.00 on 300	18,000.00



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Breaking out

Sidewalk only	.50	.10 on	5,000	2,000.00
Curb & gutter	.75	.20 on	1,000	550.00
Combined	3.00	.50 on	2,000	5,000.00

Downtown Area - Breaking Out

Sidewalk	.50	.05 on	50,000	22,500.00
Curb & gutter	.75	.10 on	5,000	3,250.00
Walk Portion Monolithic 18" pit run base	.70	.50 on	20,000	4,000.00
Curb & gutter portion	2.25	2.10 on	2,000	300.00
Monolithic no pit run base	.60	.40 on	7,000	<u>1,400.00</u>

\$97,900.00

The saving to the City on a Contract of \$411,210.00 was nearly \$100,000.00 as a result of calling for tenders instead of extending the 1957 Contract as recommended by the Commissioners.

I have set out these two Contracts in some detail because I heard a considerable amount of evidence from the officials of Burns & Dutton and also from City officials that in previous years the City had lost money because tenders had been called and existing contracts not extended. There was an attempt to prove to me that the City Council were not acting in the best interests of the City is calling for tenders.

The 1958 contract was awarded to Burns & Dutton.

Performance of the 1956 Contract.

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Performance of the 1956 Contract

Considerable evidence was taken with reference to the performance of the 1956 contract. The evidence showed that a substantial portion of the downtown sidewalks built in 1956 heaved and cracked during the winter 1956-57. A report was obtained from Dr. Hardy. A claim has been made by the City against Burns & Dutton under the terms of the contract. I do not think that I should make any extended comments on the question as it may become the subject matter of litigation which will be decided by a Court.

There are, however, two comments that may be made.

1. Mr. Thomas stated that in preparing specifications for the downtown sidewalks, he took a calculated risk in not providing for a more substantial gravel base. In 1957 and 1958 an 18 inch pit run gravel base has been provided underneath the 2 inch crushed base.
2. In making its claim against the Company, the City did not include all the sidewalks which had heaved or cracked.

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OTHER CONTRACTS OF BURNS & DUTTON
ON WHICH SOME EVIDENCE WAS GIVEN

Cushing Bridge

On May 7, 1954 Burns & Dutton received a contract to build the sub-structure of the Cushing Bridge at a price of \$176,963.00 based on unit prices.

On September 22, 1955 the Commissioners reported that \$276,000.00 had been spent on the sub-structure.

Mr. Thomas stated that the increase in cost was caused mainly by two items.

- (a) high water in the river which increased the amount of wet excavation and the amount of concrete in the coffer dams.
- (b) the extension of the approaches.

Manchester Sewer

On July 29, 1955 the City awarded the contract on the Manchester Sanitary Sewer in three parts.

Part 1	to Burns & Dutton at	\$248,647.80
Part 2	to Poole at	113,460.50
Part 3	to Poole at	51,332.50

Burns & Dutton had underbid Poole by \$62,000.00 on Part 1. Poole had underbid Burns & Dutton by \$8,000.00 and \$6,000.00 on Parts 2 and 3.

On November 22, 1955 the Commissioners reported

that Burns & Dutton had turned the Contract on Part 1 over to Poole and that Poole had done the work.

Mr. Thomas stated that the City had still treated Burns & Dutton as the contractor and Poole as a sub-contractor.

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(Go to page 161)

TRANSACTIONS BETWEEN MAYOR D. H. MACKAY AND
THE CITY OF CALGARY

Loan of 35 bags of Cement

In August of 1956 there was a shortage of cement. The Mayor wished to have some work done at his house in Banff which required the use of cement. He telephoned City Engineer Thomas and asked for a loan of 35 bags of cement. After inquiring as to the adequacy of the City supply of cement, Mr. Thomas authorized the loan. The cement was picked up by a truck owned by Burns and Dutton and taken to Banff.

In September, 1957, Mr. Thomas advised Mr. Deines of the Engineers' Accounts office that the cement was to be returned. It was not returned.

In August, 1958, an article appeared in a weekly newspaper in Calgary with reference to a loan of cement from City stores. On September 2, 1958, the Mayor had 40 sacks of cement delivered to City stores.

On September 15, 1958, a member of the City Council referred to the newspaper item in a meeting of the City Council.

PARKS DEPARTMENT

(a) Boy Scout Property

In 1930 the 8th Boy Scout Troop purchased lots 25 and 26, Block 17, Plan 21290 from the City of Calgary, and built a building on the property. The property is registered in the name of the Prudential Trust Company as trustee for the Boy Scouts.

Mayor Mackay owns lots 23 and 24 adjoining the Boy Scouts' property on the east.

The Boy Scouts' property also adjoins a small City park. There is no fence between the Boy Scouts' property and the park.

About eight years ago the Mayor made an agreement with the Boy Scout Troop whereby he built his garage so that it encroached on the Boy Scouts' property about eight to eleven feet. This was done on the understanding that on request he would remove his garage from the Scout property.

It is believed that an agreement in writing was prepared at the time the Mayor built his garage but no one has been able to find a copy of the agreement.

The Mayor has not paid any rent to the Boy Scouts but has from time to time made donations to the Troop including \$196.60 on June 16, 1958, for

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a new waterline into the Boy Scouts' building.

The evidence disclosed that the Parks Department and the City were in no way involved in this transaction.

(b) Work Done by the Parks Department

The Parks Department did work for and sold materials to the Mayor. Particulars are as follows:
1956 June 29 - Preparing beds and planting at Mayor's residence:

Labour	42.80	
Annuals	<u>17.50</u>	\$60.30

Paid by Mayor - September 26, 1956.

1957 September 18 - Labour and material at Mayor's residence.

Labour 40 hr. x 1.77	70.80	
Plants	<u>9.75</u>	80.55

Paid by Mayor - September 18th, 1958.

1958 August 28 - Swing and teeter totter 57.00

Paid by Mayor September 17th, 1958 on
issue of invoice of that date.

1958 June - Trees 27.00

Paid by Mayor September 22, 1958

1958 Park employees' services at wedding 35.76

Paid by Mayor September 22, 1958

1958 Trucking charge re wedding 6.75

Paid by Mayor September 25, 1958.

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With reference to the account of June 29, 1956, the charge had been made on the basis of 31 hours of labour by City employees. In fact, City employees had worked a total of 72 hours. On September 29, 1958, a further invoice covering the balance of 41 hours was issued for \$56.58. The Mayor paid this account. However, it is to be noted that in the original invoice issued in 1956, the number of hours of work is not shown.

The Mayor said that he was not aware that he had been undercharged on the 1956 work. He said he had mislaid the invoice covering the 1957 work. The invoice for the trees supplied in June, 1958 was not rendered until after the Council meeting which dealt with the borrowing of cement.

The invoices were not entered in the ledger. They were placed on a wall file. They were never brought to the knowledge of the auditors.

Instructions were issued by the City Treasurer on April 20, 1955 to all City Departments that a list of accounts outstanding must be given to the Treasurer every three months.

The Parks Department had a ledger but it contained records mainly of accounts owing as a result of the operation of the cemetery branch of the Department.

The list of accounts receivable supplied to the City Treasurer by the Parks Department did not contain the accounts on the wall file, therefore the 1957 account of the Mayor was never brought to the attention of the City Treasurer.

FINDINGS OF THE COMMISSIONER

DID ANY PRESENT OR FORMER MEMBER OF THE COUNCIL, ANY PRESENT OR FORMER COMMISSIONER, OR OTHER OFFICIAL, OR ANY PRESENT OR FORMER EMPLOYEE OR AGENT OF THE CITY DERIVE ANY IMPROPER ADVANTAGE, DIRECTLY OR INDIRECTLY, THROUGH HIS POSITION WITH THE CITY?

MAYOR D. H. MACKAY

1. I have previously stated that the Mayor did not derive any improper advantage directly or indirectly by:
 - (a) the acquisition by the Mormon Church of the Margetts property situated in the proposed University Site;
 - (b) the sale of the Hounsfield Heights Site to the New York interests, although I found that it was improper on his part to permit the New York interests to pay his expenses on trips to New York;
 - (c) the purchase of the Cadillac car from Eric's Late Model Cars.
2. I have previously stated that the Mayor received a substantial advantage from Keith Construction (Calgary) Ltd., although I found that there was no evidence to prove that the Mayor knew that he was receiving this advantage.
3. The Mayor accepted substantial gifts from Mr. Vineberg, Kelwood Corporation, and gifts of a lesser value from the Burns, Dutton and Jennings' interests.

No one can object to friends giving gifts to one

another, especially at Christmas time. Under certain circumstances, no impropriety can be charged, even when gifts are of a substantial nature.

Mr. Vineberg lived in Montreal. It cannot be said he was a personal friend of the Mayor. Mr. Vineberg gave these gifts to the Mayor, because he was the Mayor. The Mayor went out of his way to meet Mr. Vineberg and gave every possible assistance in support of the Spruce Cliff Apartment project which was built on the outskirts of Calgary. This was a most commendable action on the part of the Mayor. But, after all, it is clear that the Mayor considered it to be his duty as Mayor and as a Commissioner to do everything possible to assist in the development of Calgary.

The same holds true of Kelwood Corporation. Mr. Dutton, Mr. Jennings and Mr. Keith, who own interests in companies which own Kelwood, all denied that they had any knowledge concerning gifts by Kelwood to the Mayor. A corporation has no personal friends. Its officers, directors, etc., will have personal friends. But the people interested in Kelwood, who knew the Mayor, or were friendly with him, all said they knew nothing about these gifts. Again, the gifts were made by Kelwood to the Mayor because he was the Mayor.

Mr. Jennings is a personal friend of the Mayor.

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But the gifts made by Burns & Dutton Company and by Standard Gravel were not made by Mr. Burns, Mr. Dutton or Mr. Jennings, they were made by the companies. It was made quite plain that these gifts were treated as business expenses.

In addition, Burns & Dutton Company had over \$3500.00 in work and materials supplied to the Mayor. The Company was paid nothing for this work until after the City Council requested that this Inquiry be held. This work included the fireplace, the fence, the window, the carport and the alterations to the Mayor's house. If the company charged 5% on all of the work, its charge for supervision totalled \$175.00. Although no evidence was given on this question, can I not assume that the type of work which was performed for the Mayor was not the kind of work which is ordinarily carried on by this company?

These companies had large business transactions with the City. Burns & Dutton Company and Standard Gravel were paid over nine million dollars by the City between 1955 and 1958.

There was an attempt to justify the gifts because of the size and the wealth of the donors. I do not accept this as justification.

If it is proper for the Mayor to accept gifts from corporations which have contracts with the City, then

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it is proper for Councilmen, officials and ordinary employees to accept gifts.

If it is proper for Mr. Vineberg, Kelwood and the Burns, Dutton and Jennings' interests to give substantial gifts to the Mayor, then it is proper for other large companies who do business with the City, such as Assiniboia, Poole, Borger, Bennett & White and others, to give gifts to the Mayor. But none of these other companies gave to the Mayor or other City officials gifts of any amount over and above small tokens of appreciation usually given at Christmas time.

I find that Burns & Dutton Company did the various jobs for the Mayor without caring whether it received payment or not.

I find that their entire course of action from 1955 to 1958 in making these gifts and in doing this work was for the purpose of having a good friend in the City Hall.

The Mayor asks that I accept as evidence of his good faith the fact that he paid the accounts covering the fireplace, fence and alterations to his house on March 31, 1959. Ordinarily this evidence would be most acceptable. But against this, I have the silence of the Mayor when Mr. Burns gave evidence that the account for the carport had been paid in July, 1958. This was misleading evidence

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and the Mayor should not have permitted me to believe that it was correct. It was only because of the persistence of Mr. McGillivray that all the facts concerning the payment for the carport and the window were placed in evidence on the 30th of April, 1959.

This question of the payment of the carport and window accounts has troubled me again and again in my endeavour to write this portion of my report. I am convinced that some of my remarks in this portion of the report would have been different had the Inquiry ended without the production of the evidence on the 30th April, 1959, concerning the predating of the receipt and of the cheque.

On March 16, 1959, Volume 1 of the City of Calgary Administration Manual was issued. The second paragraph of the "Foreword" reads as follows:

" For the first time in our seventy-five years as a City there is compiled in one place, available to all employees, a complete guide to the Rules and Regulations covering the everyday functioning of the Municipal affairs of Calgary."

The "Foreword" is signed by the Mayor and by Commissioners Batchelor and Thomas.

Section 066 of Chapter 6, page 24, reads as follows:

" Gifts or favours to the City of Calgary shall

be accepted by the Mayor on behalf of the citizens.

It is against City policy for individual employees to accept personal gifts or favours that are offered in gratitude for services rendered or anticipated from any person or firm having business dealings with the City.

When such are offered, this policy is to be explained to the donor, and the gift refused.

If delivered, the gift shall be returned to the donor with an accompanying letter of thanks, explaining the City's policy. A copy of this letter shall be forwarded to the Department Head or Board of Commissioners as the situation warrants."

And section 068, headed, "Acceptance of Travel Expenses", reads as follows:

" It is the City's policy to pay the expenses of employees while travelling on City business."

It is generally recognized that there is a very high standard with reference to the conduct of public servants in Great Britain. This is evidenced by, "The Prevention of Corruption Act (1916) 6-7 George V. Chapter 64. Section 2 of that Act reads as follows:

" Where in any proceedings against a person for an offence under The Prevention of Corruption Act, 1906, or The Public Bodies Corrupt Practices Act,

1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any Government Department or a public body by or from a person, or agent of a person holding or seeking to obtain a contract from His Majesty or any Government Department or public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proven."

In other words, in Great Britain the giving of a gift by a contractor holding a contract from a public body to a person in the employment of that public body is prima facie proof of the violation of the Act. The person receiving the gift must, in Great Britain, satisfy the Court he did not receive the gift in return for assisting a person who holds a contract. It is true that the burden of proof in such instances is not as great as the burden of proof on the Crown to prove guilt in an ordinary case (*R. v. Carr Briant* (1943) 1 K.B. 607). However, this provision in the law in Great Britain must act as a great deterrent against the acceptance of gifts from contractors by public officials.

An article by Peter C. Newman, "John Kiefenbaker

shows his souvenirs of John A. MacDonald", appears in McLean's Magazine of July 4th, 1959. One paragraph of the article reads as follows:

" While he accepts most of the knickknacks he receives, Diefenbaker carefully avoids valuable gifts that might establish a sense of obligation. Before his world trip, a Montreal lawyer sent him a leather suitcase. It was returned, as was a gold-plated casting reel presented by a U.S. manufacturer."

The words, "might establish a sense of obligation" is a good test to apply in deciding whether a gift should be accepted by a person in public life. The substantial gifts received by the Mayor, plus the items of work done for him, would establish a sense of obligation in the mind of an average individual.

The Mayor states that no sense of obligation was established as a result of these gifts and the work done. But that is not the whole answer. As I said at the beginning of the Inquiry, it must appear to the Public, as well as being a fact, that public business is being conducted in a proper manner.

I find that it was improper for the Mayor to accept these substantial gifts from persons and firms having business dealings with the City. I find that it was improper for him to use the services of Burns & Dutton

Company over a period of four years without any payment being made for these services. I am sure that if this company had built a fireplace and a fence in 1955, installed a window in 1956, built a carport in 1957, for an ordinary citizen and had not received any payment on account, it would not have spent an additional \$1,300.00 for this same citizen in 1958 for house alterations, even though that citizen gave it a cheque for \$500.00 which was to be paid some time in the future.

I find that the Mayor received these gifts and had the work done without payment because he was Mayor. He received these advantages because he was Mayor.

For these reasons, I find that he derived a direct improper advantage through his position as Mayor.

4. Cement: There can be no question but that it was an improper action for the Mayor to borrow cement from the City. If it had been returned within a few days or a few weeks, no harm would have been done. But the Mayor is open to strong criticism in his failure to return the cement until a period of two years had elapsed. Employees of the City knew that the Mayor had borrowed the cement. Some employees knew that the question of the return of the cement had been broached a year later and that it had not been returned. Apparently the fact of the borrowed cement preyed on the mind of an employee to such an extent

that information was given out by that employee in such a manner that it came to the attention of a weekly newspaper.

Cement is purchased with taxpayers' money for the purpose of the construction of public works for the citizens as a whole. It was an improper action on the part of the Mayor when he borrowed the cement. It was improper on his part not to be very meticulous in seeing to it that it was returned promptly.

He obtained the cement because he was the Mayor. The City Engineer would not have loaned the cement to an ordinary citizen.

The Mayor derived a direct improper advantage through his position as Mayor in borrowing the cement.

Parks Department: As no detailed account of the work done by the Parks Department for the Mayor in 1956 was rendered to the Mayor, there is no evidence that the Mayor knew that he was undercharged on this work to the extent of 41 hours of work at a cost of \$56.58.

The Mayor stated that the account rendered in 1957 was mislaid and that he had forgotten that the account had not been paid. The other accounts were incurred in 1958 and all of these accounts except the first account in 1956 were paid after the date of the Council meeting which dealt with the cement problem.

These transactions show the danger of a civic

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official having dealings with a City Department such as the Parks Department.

With reference to the work done in 1956, 41 hours of work was done by City employees over and above the hours charged to the Mayor. For two years these 41 hours of work and this amount of \$56.58 must have been improperly charged to some item in the Parks Department budget. Employees in the Department would know of this improper charge.

Again, when citizens see City employees working on the Mayor's private property, it is natural that some citizens assume that the Mayor is having the work done free of charge, even though such assumption is entirely incorrect.

It was suggested that in some cities in the world the Mayor is supplied with a home. In Canada, Great Britain and the United States the head of the State is supplied with a home. But in these cases the added advantages have been granted by action of competent legislative authority.

Neither the Mayor nor any other City official or employee is entitled to use the services of any civic department in any manner which is not open to any other citizen of the City.

The Mayor should not have used the facilities of the Parks Department for private work on his behalf and it was an improper action on his part to do so. The work was done for him by the Parks Department because he

was the Mayor. He placed the Parks Superintendent, Mr. Munro, and the Administrative Assistant to Mr. Munro, Mr. Barraclough, in very embarrassing situations. There is no evidence that the Mayor obtained an advantage in money value by such use apart from the fact that he did not pay for part of the 1956 work and for the 1957 work until September, 1958.

FORMER COMMISSIONER STRONG
COMMISSIONER THOMAS
MR. WALSHAW

Substantial gifts were given by Burns & Dutton Company and by Standard Gravel to these officials.

Two of the recipients were concerned with recommendations to Council concerning contracts to be awarded to the companies. All three were concerned with the proper carrying out of these contracts.

For the reasons given in my findings with reference to gifts to the Mayor, I find that it is improper for City Commissioners, City Engineers, Superintendents, and, in fact, any City official or employee to accept gifts (other than small tokens of appreciation) from contractors having contracts with the City. Of course, City policy now goes further than this, in that the policy set out in the Manual states that no gifts are to be accepted.

These gifts were given to the three men because

they were intimately connected with the contracts held by these companies. These companies did not give substantial gifts to officials of the transit system, Parks Department, etc.

In accepting these gifts, former Commissioner Strong, Commissioner Thomas and Mr. Walshaw derived an improper advantage through their respective positions with the City.

DID ANY PERSON HAVING OR HAVING HAD DEALINGS WITH THE CITY BY WAY OF CONTRACT OR OTHERWISE DERIVE ANY IMPROPER ADVANTAGE THROUGH THE POSITION WITH THE CITY OF ANY PRESENT OR FORMER MEMBER OF THE COUNCIL, PRESENT OR FORMER COMMISSIONER OR OTHER OFFICIAL, OR ANY PRESENT OR FORMER EMPLOYEE OR AGENT OF THE CITY?

I have previously found that:

1. The Mormon Church did not derive an improper advantage in acquiring the Margetts' property through the position of Mayor Mackay.
2. The New York Interests and Clifford R. Walker did not derive an improper advantage in acquiring or selling their interests in the North Hill Shopping Centre through the position of Mayor Mackay.
3. Warner Holdings Ltd. did not derive any improper advantage in acquiring the Sarcee Triangle through the position of Russell Riley as Land Superintendent or through the position of any other employee of the City.

4. That Bruce Barton, an employee of the Land Department, did not derive any improper advantage in the purchase of the Clarke House through his position as an employee of the City.

5. I find that there was no evidence presented that showed that Mr. Vineberg or Kelwood Corporation derived any improper advantage by reason of their gifts to the Mayor.

6. I find that there was no evidence presented that showed that Mr. Keith or any of his companies derived any improper advantage in their dealings with the City.

7. Before summarizing my findings with reference to the Burns, Dutton and Jennings interests, I will briefly review the history of their transactions with the City from 1954 to 1958:

(a) 1954 Sidewalk, Curb and Gutter Contract

Burns & Dutton Company were the second low bidder. The low bidder withdrew and the contract was awarded to Burns & Dutton Company. My comments on some of the circumstances surrounding the withdrawal of the lowest bidder are contained at page 140 of this Report. As set out at page 135 of this Report, the Commissioners wrote to Council on April 23rd, 1954, that they were satisfied that Assinboia's bid was made without full knowledge of the contract, that their withdrawal be accepted and the contract be awarded to Burns & Dutton. As previously set out, Mr.

Thomas said that he had discussed the contract with Mr. Paget and satisfied himself that Assiniboia understood the terms of the tender. Mr. Nelson, in his evidence, said that he felt sure that the addendum dealing with deletion of yield per cubic yard was not sent out without the concurrence of Mr. Paget. In view of the evidence given by Mr. Thomas and Mr. Nelson, it is difficult to understand the positive statement of the Commissioners in their report to Council that the company did not have full knowledge of the conditions of the contract.

(b) 1954 - Cushing Bridge

Burns & Dutton Company was awarded the contract on the substructure of the bridge at a bid of \$176,963.00. Seventeen months later the Commissioners reported to Council that the Company had been paid \$276,000.00 on the contract on the basis of unit prices.

(c) 1955 - Manchester Sanitary Sewer

Burns & Dutton Company underbid Poole by \$62,000.00 and was awarded a contract of \$248,647.80 on Part I of this project. Poole underbid Burns & Dutton by \$8,000.00 and \$6,000.00 on Parts 2 and 3 and were awarded contracts of \$113,460.50 and \$51,332.50 on July 29th, 1955. On November 22nd, 1955, the Commissioners reported that Burns & Dutton had turned the contract on Part 1 over to Poole and that Poole had carried out this part of the contract.

(d) 1956 - Sidewalk, Curb and Gutter Contract

Fort Construction was the low bidder on this contract. Mr. Thomas gave a half-hearted recommendation that this Company be given the contract. The Commissioners recommended that the contract be given to Burns & Dutton for one year and this recommendation was approved by Council.

In his letter to the Commissioners, Mr. Thomas said in part:

" Of course, as you can realize, being a new company, we will have to keep a very careful check on the work as we would have to do with any new company coming in. This does not indicate that we do not keep a close check on all work carried out, but supervision would have to be extended in the case of a new company."

In their report to Council, the Commissioners noted that Fort Construction was non-union.

There can be no doubt that Mr. Thomas and the Commissioners favored Burns & Dutton in this instance. Was this done in absolute good faith or was there an element of actively assisting the local contracting firm, some of the owners of which were close friends of the City Engineer? I will endeavour to answer this question at the end of this review.

(e) 1956 - Paving Contract

Standard Gravel was given a three-year paving contract in 1953. This contract was extended for a period of one year in 1956 by City Council on the recommendations of the Commissioners.

(f) 1956 - Trans Canada Highway

No one can blame the Burns, Dutton and Jennings Interests for taking any and all legitimate steps to protect the Peerless Rock property, which contained their sand, gravel and asphalt operations. They were entirely correct in making every possible representations to the Government in favour of a route which would do the least damage to their property.

The question is whether it was proper for the Mayor in the first instance, followed by Commissioner Strong, to endorse the brief of the company and then actively endeavour to have the Government adopt the route proposed by the companies. It was admitted that the route proposed by the companies was inferior as to grade, alignment and sight clearance. The question of cost of right-of-way was no concern of the City as the right-of-way was paid for by the Government.

The brief stated that the building of the highway along 16th Avenue involved the firm opposition of the City. In his letter, Mayor Mackay stated that the Board

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(i.e. the Commissioners) favored the submission as presented in the brief.

It was argued that the City opposed the 16th Avenue route because at that time the right-of-way was only 66 feet in width. But this argument was met by Mr. Taylor in his first letter, dated August 7th, in which he asked if a 150-foot right-of-way along 16th Avenue would be more acceptable. Again, on October 26th, Mr. Taylor pointed out that adequate right-of-way could be provided on all proposed routes.

It was also argued that the City believed that as the route had not been settled, there was a possibility that the Province might agree to the adoption of the Shaganappi Gap route originally proposed by the City. There is no mention of this in the correspondence.

However, it must be kept in mind that the whole discussion arose in the first instance because the Government raised the possibility of using the 16th Avenue right-of-way instead of the route agreed upon.

I find that there was a mixture of motives on the part of the Mayor and Commissioner Strong in actively supporting the brief of the companies. There was some element, at least, of endeavouring to assist the companies, with whom the City was doing a large business and with whose leaders the City officials involved were on a friendly basis.

(g) 1957 - Extension of the 1956 Sidewalk,
Curb and Gutter Contract

The dispute as to whether the 1956 sidewalk, curb and gutter contract was a one-year contract or a three-year contract arose. Mr. Thomas had written the letter referred to in the evidence given on this matter. The Commissioners recommended that the contract be extended for a further period of two years. Council refused to agree and called for tenders. Burns & Dutton Company was the low tender and was awarded the contract.

As to the evidence of Mr. Simpson, General Manager of Burns & Dutton, to the effect that he believed that the Company had a three-year contract, I can add nothing to the word used by Commissioner Batchelor, and that word was "nonsense" (page 2274 of the transcript).

The contract was awarded after a bitter debate in Council. A one-year bond was applied for and the bonding company was advised of the one-year bid of Fort Construction. The Company received payment during the whole of the summer on the one-year rates. In July a meeting took place with reference to payment for the downtown work on the one-year rates. Mr. Simpson attended that meeting and he was the person to whom the letter was written after that meeting.

The question to be answered is this: Did City Engineer Thomas actively assist Burns & Dutton Company

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in its claim of a three-year contract or was he misled by Mr. Simpson into believing that the Company had a three-year contract?

After reviewing the evidence several times I have come to the conclusion that he was misled by Mr. Simpson. I am strengthened in this conclusion by the evidence of Mr. Thomas concerning the meeting in July. At that meeting Mr. Simpson endeavoured to claim further payments for the extra width of sidewalks in the downtown area, notwithstanding the fact that both Burns & Dutton Company and Fort Construction understood that they were to be paid only at the rates quoted in the schedules, notwithstanding the extra widths in the downtown area.

In being misled by Mr. Simpson, Mr. Thomas was negligent in looking after the interests of the City. In passing, I may say that the Legal Department of the City was also negligent in not checking the contract before sending it to Burns & Dutton for signature. There was further negligence on the part of someone in the City in not checking the three-year bond which was sent to the City by the Company.

What caused Mr. Thomas to be negligent? It must be pointed out that the City was growing at a terrific rate in 1956. The City Engineer and his staff were saddled with the planning and supervision of millions of

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dollars of contracts, including sidewalks, curbs, gutters, paving, storm sewers, sanitary sewers, water lines, the development of the Manchester stores building and site, the Glenmore filter plant, the sewage treatment plant, along with the ordinary routine work. Mr. Thomas must have been under a tremendous strain in carrying out this very heavy load of responsibilities. It was easy to make an error with so many problems to cope with.

But giving Mr. Thomas the full benefit of these extenuating circumstances, I find that his negligence in writing this letter was conditioned to some extent by reason of his close friendship with the officials of Burns & Dutton as evidenced by the company gifts of a gift certificate and coffee wagon in 1955, and a television set in 1956. I do not suggest that Mr. Thomas wrote this letter because he received these gifts. I find that the gifts show a close personal relationship with Mr. Simpson and other officials of the company. As a result, Mr. Thomas relied on the good faith of Mr. Simpson when he should have made a careful check of the contract before writing the letter.

(h) 1957 - Sidewalk, Curb and Gutter Contract

The tenders on the 1957 contract show why there must not be any cause whatsoever for a suspicion that the City Engineer or Commissioners are showing any favoritism

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towards one contractor over others. Tenders for this work are on a unit basis and there has been evidence that in some unit basis contracts more work has been done by contractors than was originally shown in the contracts.

In 1957 the bid of Burns & Dutton was \$386,175.00. The Bid of Transcrete was \$391,655.00. The contract covered both residential and downtown areas. The bids can be broken down as follows:

	<u>Downtown Area</u>	<u>Residential</u>	<u>Total</u>
Burns & Dutton	74,500.00	311,675.00	386,175.00
Transcrete	96,900.00	294,755.00	391,655.00

If it is presumed that due to its location, the amount of downtown work would have to be carefully planned and not greatly exceeded in any year, then it can be seen that increasing the amount of work in the residential area by a considerable degree could have the effect of the contract being performed by the second lowest bidder.

I hasten to say that I make no suggestion that the amount of residential work was increased in 1957. In fact, it was not because the contract was not completed because of a shortage of funds. I merely use the competitive bids in 1957 as an example for the purpose of pointing out that the City Engineer and the Commissioners must enjoy the highest confidence of contractors bidding on City contracts on a unit basis.

(i) 1957 - Paving Contract

The Commissioners recommended that the paving contract be extended in favour of Standard Gravel for another year. They stated that the company had agreed to decrease the price of asphalt by 50 cents a ton. Council refused to accept this recommendation and called for tenders. Standard Gravel was the low tenderer and was awarded the contract. Evidence was given that the tender was about \$80,000.00 higher than the suggested prices on the extension of the contract.

(j) 1958 - Contracts

The Commissioners reported that due to a shortage of funds most of the capital works projects had not been completed in 1957. Burns & Dutton had uncompleted work in the amount of \$67,846.74 on the 1957 sidewalk, curb and gutter contract. The Commissioners recommended that Burns & Dutton be given the 1958 contract at the same prices as the 1957 contract. Council refused to follow this advice and called for tenders. Burns & Dutton was the low bidder at \$411,210.00. Previously in this report, I have indicated that the City saved nearly \$100,000.00 by calling for tenders.

(k) 1958 - Chinook Shopping Centre

The Mayor at the request of Mr. Dutton arranged to have two City officials along with himself go to

Seattle to inspect traffic arrangements at the North Gate Shopping Centre. The Mayor believed that the expenses of the trip would be paid by the Chinook Shopping Centre. A yacht trip from Vancouver to Seattle was involved.

No one can quarrel with a company endeavouring to have the City adopt one course of action instead of another, to agree to traffic lights instead of a cloverleaf. However, I find that it was improper to have any one believe that the expenses of the trip would be paid for by the Shopping Centre. Especially is this true when a yacht trip was involved. There is no doubt that such a course of action might give rise to a sense of obligation by these officials towards the company.

(1) Some General Comments on Public Works Contracts between 1954 and 1958.

During the years 1954 to 1958, about seventy contracts for public works were let by tender. Burns & Dutton Company was low bidder on about fifteen and were awarded the contracts. The company bid on many other contracts, was not the low bidder, and did not receive the contracts.

The case of Assiniboia withdrawing its tender is not the only case in which this was done. The Commissioners' reports and Council minutes show that in 1955 Bennett & White withdrew its bid on the West Calgary Reservoir. The second tender was incomplete and the contract was awarded to Foundation, the third bidder.

After six months of argument, Council returned the deposit of Bennett & White on a 7 to 6 vote.

There are also cases of Council awarding contracts to other than the lowest bidder. In December, 1956, the Commissioners recommended and Council endorsed the awarding of the Manchester storm sewer contract to Poole, although Holmes was the lowest bidder. The same course was followed in the Kingsland and Mayfair subdivisions water installations in May, 1957, when a contract was awarded to Borger, although Studer Bros. were the low bidder.

There was no evidence presented by other contractors that the Burns, Dutton and Jennings interests derived any improper advantage in their dealings with the City.

(m) Conclusion

The only law which deals with the conduct between a civic official and a person endeavouring to obtain or holding a contract with a municipal corporation is contained in Section 104 of the Criminal Code of Canada.

That Section reads as follows:

"1. Every one who

(a) gives, offers or agrees to give or offer to a municipal official, or

(b) being a municipal official demands, accepts or offers or agrees to accept from any person, a loan, reward, advantage or benefit

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- of any kind as consideration for the official
- (c) to abstain from voting at a meeting of the municipal council or a committee thereof,
 - (d) to vote in favour of or against a measure, motion or resolution,
 - (e) to aid in procuring or preventing the adoption of a measure, motion or resolution, or
 - (f) to perform or fail to perform an official act,
- is guilty of an indictable offence and is liable to imprisonment for two years.

3. In this section, 'municipal official' means a member of a municipal council or a person who holds an office under a municipal government."

In passing, it is interesting to note that a conviction under this section of the Criminal Code would not deprive a member of a city council in Alberta of his seat on the Council. This section only carries a maximum penalty of two years imprisonment. Section 97 (h) of the City Act states that a person cannot be elected or sit on the Council if he has been convicted of a criminal offence punishable by.....or imprisonment for more than five years. It is also interesting to note that a member of a town or village Council loses his seat on the Council if he is convicted of a criminal offence punishable by imprisonment for more than two years (Section 108).

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I was not asked to find whether there was evidence to suggest that offences against this Section of the Criminal Code were committed. I merely point out that it is the only offence in our law which deals with the relationship between a civic official and a contractor.

I do say that the evidence given at the Inquiry would not justify me in suggesting or recommending that a charge or charges be preferred against anyone under the provisions of this section of the Criminal Code.

I find that in some instances, such as transactions involving the Trans Canada Highway, the Chinook Shopping Centre, the granting of the 1954 and 1956 sidewalk contracts, the attempted extensions of the 1956 and 1957 sidewalk contracts, the close association between the officials of the Burns, Dutton and Jennings interests on the one hand and Mayor Mackay, Commissioners Strong and Thomas on the other hand, as evidenced by their friendship and by the gifts and work done, did have some effect on the course of action taken by the Mayor and Commissioners Strong and Thomas.

It is very difficult to assess motives. It is often dangerous to draw inferences.

But considering all the transactions over a period of five years, after having weighed as carefully as I can the evidence given, including the evidence of Mr. Simpson and Mr. Thomas on the 1956 contract, and the

evidence of the Mayor and Mr. Burns with reference to the pre-dating of the cheque and receipt, I find that in some cases there were attempts to have an advantage accrue to these interests. I use the words, "attempts to have an advantage accrue" because:

- (a) The Government did not accede to the recommendations of the Mayor and Commissioner Strong on the Trans Canada route;
- (b) The City has not agreed to instal traffic lights on the Macleod Trail;
- (c) The City Council refused to extend the 1956 and 1957 sidewalk contracts.

With reference to the 1954 sidewalk contract, Mr. Thomas said in his evidence at this Inquiry that Assiniboia understood the terms of the tender. With this evidence in mind, as well as his evidence on the 1956 sidewalk contract, I feel that both of his reports on these contracts were made in such a manner as to favour the acceptance of Burns & Dutton Company as the successful bidder.

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EVIDENCE AS TO PROCEDURES IN THE
GENERAL OPERATION OF THE CITY

The Order of the Attorney General did not request me to make any general findings with reference to the good government of the City.

However, evidence of a general nature was given by Commissioner Batchelor, Treasurer Forbes, Purchasing Agent Webb and Mr. Kirkham, who is Supervisor of System and Procedure Service. In view of this evidence, perhaps the Members of the City Council expect me to make some comments on this evidence. Such comments are made with only a limited amount of evidence having been heard.

Mr. Webb gave evidence that the Visirecord System has been introduced into the Stores system of the City since the date on which the Mayor borrowed the cement. This system will effectively prevent such an unhappy event occurring again.

This system protects the interests of the taxpayers as long as stores remain in the custody of the purchasing agent. Once stores are released to the various departments for use, then it is the duty of someone to see

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that they are used in the projects for which they are designated. Mr. Forbes stated that an internal audit system was being set up. I presume that one of the duties of those in charge of this system will be to spot-check from time to time on items of stores once they are released by the purchasing agent.

As previously stated, the City is in the process of publishing an "Administration Manual" which, when completed, will set out in detail the duties of all employees, their relations with the public, and the procedures to be adopted in carrying out the work of supplying the many municipal services to the citizens of Calgary.

With reference to public relations, the Manual states that employees shall not accept gifts from any person having business relations with the City. I presume that when City Council endorsed the contents of the Manual, the members of the Council agreed that the standard of conduct imposed on employees would also apply to members of the Council and the Commissioners. The same presumption applies to the payment of travelling expenses. I feel sure that the Mayor, the Commissioners and the Members of Council will feel bound to observe these instructions which have been issued to the employees of the City.

On reading some of my remarks made during the Inquiry, it may appear that I made some statements which

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would appear unfair to the City auditors. I certainly did not wish to make any unfair remarks. My remarks were prompted by the fact that forty-one hours of work performed by employees of the Parks Department had not been properly charged for a period of two years, and also because several outstanding accounts owing to the Parks Department had not been brought to the attention of the auditors over a period of years. Again, no spot checks had been made of Stores Department inventories for several years.

No doubt the establishment of an internal audit as presented by Mr. Forbes will prevent these situations from arising again.

But perhaps City Council should obtain a detailed statement of the present duties of the City Auditor. The City Auditor is the employee of the City Council and is answerable to the City Council, and to no one else. The internal audit to be established will, I presume, be answerable in the first instance to the Commissioners. The City Auditor received \$7500.00 in 1954; \$9,000.00 in 1955; \$10,000.00 in 1956, 1957 and 1958, and \$12,000.00 in 1959. For this fee he audits all City departments, including all utilities, the General Hospital, the School Boards and the Public Library. Mr. Forbes agreed with me that he is grossly underpaid. The City Council should clearly understand what services it is receiving from the Auditor and

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if, in its opinion, the scope of these services should be increased, then the Council should be prepared to pay for them.

The City of Calgary has grown at an explosive rate. I believe that the population has doubled since 1951. The Council, Commissioners and Department Heads have had a tremendous job in planning for and carrying out civic projects to cope with the growth. Not only have services been extended to the new areas, but many of the trunk facilities have been enlarged to take care of the increase in population. Civic staffs have had to be increased and no doubt there has been a considerable turnover in staff. It is little wonder that there has been some breaking down of liason between Commissioners and Council.

I was impressed by the evidence of Commissioner Batchelor that this is realized and that all possible steps are being taken to keep Council fully informed. This, I believe, is most important in preventing the belief that the executive part of the civic Government is not keeping the legislative part fully in the picture at all times.

Especially do I think it is important that the Commissioners should advise Council immediately if it is intended to have a contractor do more work on a unit price basis than the amount shown in the contract. Whether Council's approval is required is something for Council to decide.

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In conclusion I wish to thank the Commissioners, the City Clerk, and all others on the City staff who made available all the records, reports, minutes and contracts which they were asked to produce.

I also wish to thank Mr. McGillivray, Mr. Helman, Mr. MacKimmie, Mr. Milvain, and the other counsel who appeared at the Inquiry and who assisted so ably in presenting all the evidence which might have a bearing on the subject matter of the Inquiry.

DATED at the City of Lethbridge, in the Province of Alberta, this *27th* day of July, A.D. 1959.

"L. Sherman Turcotte"
L. Sherman Turcotte - Commissioner

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